

Crime Gun Trace Data

ACCESS DENIED  
BY ORDER OF  
THE GUN LOBBY

# Without A Trace

*How the Gun Lobby and the Government Suppress the Truth About Guns and Crime*

Brady Center to  
Prevent Gun Violence

# Without A Trace

*How the Gun Lobby and the Government Suppress the Truth About Guns and Crime*



A Project of  
the Brady Center to Prevent Gun Violence

April 2006

## ACKNOWLEDGEMENTS

The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project *Gun Industry Watch*, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organizations the Brady Campaign to Prevent Gun Violence and the Million Mom March.

*Without a Trace* was written by Elizabeth S. Haile. Thanks goes to Dennis A. Henigan, Brian Siebel, Kristen Comer, Tony Orza, and Steve Groeninger for their assistance in preparing the report.

If you have questions about any part of this report, or would like a copy, please write to *Gun Industry Watch*, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Washington D.C. 20005. The report is also available at [www.bradycenter.org](http://www.bradycenter.org).

Copyright © 2006 by Brady Center to Prevent Gun Violence  
No part of this publication may be reproduced without prior permission.

# Table Of Contents

Executive Summary iv

## **Part One – American Gun Regulation: A History of Secrecy Undermining Law Enforcement 1**

The Gun Lobby's Paranoia 2

Keeping Government Records from the Government 2

The Short Life of Gun Records 3

## **Part Two – The Curtain of Secrecy Begins to Lift: Crime Gun Traces and What They Mean 5**

The Crime Gun Tracing Process 5

- Early History of the Crime Gun Tracing System 6

- Crime Gun Tracing is Expanded During the Clinton Administration 8

What Crime Gun Trace Data Has Taught Us 10

- Crime Guns Don't Grow on Trees 10

- A Few Bad Apples 12

- Gun Laws Work 13

- Not All Guns Are Equal 15

Why Crime Gun Trace Data Is So Threatening To the Gun Lobby 17

## **Part Three – The Curtain Falls on the Truth: Hiding Crime Gun Trace Data From the Public 20**

ATF Falls Silent About Crime Gun Traces 20

ATF Makes Excuses for the Gun Industry 21

Congress Acts to Block the Release of Crime Gun Trace Data – The Story of the “Tiahrt Amendment” 25

- The Effect of the Tiahrt Amendment on ATF 30

- The Effect of the Tiahrt Amendment on Law Enforcement 31

- The Effect of the Tiahrt Amendment on Congress 33

- The Effect of the Tiahrt Amendment on the Use of Trace Data in Research 33

## **Conclusion 34**

## **Endnotes 36**

## **Appendix 43**

## EXECUTIVE SUMMARY

Over the last ten years, law enforcement agencies nationwide have recovered more than two million crime guns. In an effort to identify who sold those illegal guns and to help solve gun crimes, the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) traces these firearms from the gun manufacturer down through distributors and dealers until it identifies the sale of the gun to a member of the public. At the same time that it tracks the individual sales history of each crime gun, ATF records the information it learns through the crime gun tracing process in a massive computer database.

As ATF developed its database of more than two million crime guns, it released to law enforcement agencies, scholars, the press, local and state governments, and the public, numerous reports analyzing the patterns of crime gun sales, as well as portions of the trace database itself. Reports on crime gun trace data revolutionized our understanding of the illegal gun market and how it is supplied – establishing that strong gun laws have a profound impact on access to guns by criminals in the illegal market, and identifying the gun manufacturers, distributors, and dealers most responsible for supplying crime guns.

Crime gun trace data has provided powerful evidence of the gun industry's complicity in fueling the illegal market, showing that *thousands of guns move quickly from a relatively small number of licensed gun dealers into the illegal market*. Indeed, almost 60% of the crime guns traced in a given year were sold by only 1% of the licensed firearms dealers, while about 85% of gun dealers had no traces at all. The gun industry knows who the high-trace dealers are, but has refused to stop selling them guns or force them to reform. As a result, felons and other prohibited purchasers have been supplied the tools of violence – aided and abetted by careless or corrupt dealers. Our nation suffers from the violent gun crime that ensues.

The gun industry has argued that ATF trace data is meaningless or insignificant. For example, gun industry spokespeople continuously claim that the concentration of crime guns originating from a relatively few dealers may indicate only that they sell a lot of guns. ATF's own investigations have disproved this argument, however, as have academic studies.

Unfortunately, rather than taking the gun industry to task for its blatant misrepresentation of trace data, under the Bush Administration, ATF has instead

helped to defend the industry. ATF shielded from release under the Freedom of Information Act portions of its own *Report to the Secretary of the Treasury on Firearms Initiatives* disproving the industry's claims. It also issued a press release supporting the industry that directly contradicted the findings in ATF's own *Report*, while at the same time turning over the document, in unredacted form, to the gun industry itself. ATF has also stopped releasing to the public any data or reports discussing the sources of illegal guns, thereby helping the gun industry cover up its participation in supplying the illegal gun market.

Even more disturbing, once the gun industry realized that its excuses were not enough to blunt growing public criticism of its sales practices, starting in 2003 the industry and the National Rifle Association worked quietly behind the scenes to attach riders to federal appropriations bills in order to prevent ATF from releasing crime gun trace data to anyone. The legislation, known as the "Tiahrt Amendment," after sponsor Congressman Todd Tiahrt (R-KS), prevents ATF from disclosing to the public crime gun trace data that has long been gathered by ATF and released – data that has been used in countless studies and public reports to evaluate the effectiveness of legislative proposals and of the ATF's enforcement efforts. The gun lobby is currently attempting to make these riders permanent in H.R. 5005, a bill introduced in the U.S. House of Representatives on March 16, 2006.

The more the public understands about crime guns, the more it also understands the integral role of reckless licensed gun dealers in supplying the illegal market. The gun lobby, and particularly the gun industry, feel threatened by this knowledge because it supports the need for tighter federal regulation of gun dealers and gun sales to curb the flow of guns into criminal hands. The Tiahrt Amendment is a transparent attempt by the gun lobby, and its wholly owned friends in Congress, to shield the public, as well as government and law enforcement agencies, from the truth about guns and crime.



---

## *Part One*

---

# **AMERICAN GUN REGULATION: A HISTORY OF SECRECY UNDERMINING LAW ENFORCEMENT**

**I**t is hard to believe that in today's world, where technologically stunning crime scene investigations are featured in some of the most popular shows on television, that federal, state, and local law enforcement agencies have to operate without basic information that would allow them to quickly determine the origin of crime guns. Yet, thanks to a powerful gun lobby obsessed with secrecy, vital records held by the gun industry are either shielded from law enforcement's eyes or destroyed altogether.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the federal agency charged with regulating the industry, has been hampered from taking effective enforcement actions against corrupt gun sellers by a series of laws enacted at the urging of the National Rifle Association (NRA) – a lobby long obsessed with secrecy. Consequently, ATF is forced to rely mainly upon voluntary compliance with federal law by members of the gun industry, and operations of the industry are shielded from public view.

The NRA has worked tirelessly to either block or weaken laws that would strengthen law enforcement's capability to regulate corrupt gun sellers and fight gun crime. The gun lobby has opposed federal laws designed to prevent the sale of guns to criminals, including: the Gun Control Act of 1968, which made it illegal to sell guns to minors and felons, established a



licensing system for gun dealers, and banned the interstate sale of firearms to unlicensed persons; the 1993 Brady Law, which put in place criminal background checks for gun purchases at licensed dealers, first for handguns, then for all guns; and the 1994 Assault Weapons Act which, until its expiration in 2004, banned the sale and possession of military-style semiautomatic assault weapons.

One piece of legislation the gun lobby did support was the Firearm Owners Protection Act (FOPA), a roll-back of portions of the Gun Control Act. The FOPA limited ATF's ability to investigate corrupt gun dealers and revoke dealer licenses and exempted federally licensed dealers from certain recordkeeping requirements.

## **THE GUN LOBBY'S PARANOIA**

The gun lobby repeatedly claims that any sort of regulation of gun ownership will eventually lead to the complete confiscation of all firearms. "Registration leads to confiscation," is the NRA's mantra.<sup>1</sup> Under the NRA's theory, if any governmental records are kept on firearm sales, it would inevitably lead to registration of firearms, which would lead to the confiscation of all firearms by "jack-booted government thugs"<sup>2</sup> raiding people's homes.

Typical NRA advertisements hammer home the fanciful link between keeping track of firearm sales in order to prevent and solve gun crimes and the creation of a "total police state:"

"We all know their Master Plan. First, outlaw all handguns. Then register all rifles and shotguns. Finally, confiscate and destroy all rifles and shotguns. Make no mistake, these anti-gun and

anti-hunting forces are working feverishly for the day when they can gather up your rifles, handguns, and shotguns and ship them off to gun-melting furnaces."<sup>3</sup>

"Gun prohibition is the inevitable harbinger of oppression."<sup>4</sup>

Of course there is no truth to the NRA's shrill claims, as no federal gun law has ever prevented law abiding citizens from buying a legal firearm, and state registration laws have not led to confiscation. Yet, the gun lobby's paranoia about anything related to government firearm records has led to a system of federal laws riddled with nonsensical prohibitions on state and federal law enforcement's ability to track firearm-related crime and investigate corrupt gun sellers.

## **KEEPING GOVERNMENT RECORDS FROM THE GOVERNMENT**

Federal law requires individuals who are "in the business" of selling firearms to obtain a license from ATF and keep records of all firearm purchases and sales.<sup>5</sup> These transactions are required to be recorded in what is known as an "A&D" book (for Acquisition and Disposition) or computer system.<sup>6</sup> A customer purchasing a firearm must also fill out and sign a Firearms Transaction Record, ATF Form 4473.<sup>7</sup> This form records the buyer's name and address and type of identification shown to the gun dealer. It also requires gun buyers to answer a series of questions to determine whether the purchaser is prohibited by law from buying the gun. The information in Form 4473 is of obvious value to law enforcement if the gun in question is ever connected to criminal activity. However, these records simply sit in the dealers' shops, unless, of course, the

dealer loses or misplaces them. Records containing information about particular gun sales are transmitted to the government only in limited circumstances, such as after a dealer goes out of business, or if a dealer sells more than one handgun to the same purchaser within five business days.<sup>8</sup>

At the urging of the NRA, in 1979 Congress put in place restrictions in an appropriations bill prohibiting ATF from obtaining sales records from gun dealers and centralizing them. These restrictions have persisted in every appropriations bill thereafter.<sup>9</sup> And in the FOIA, Congress explicitly prevented ATF from establishing any database of firearms sales.<sup>10</sup> Consequently, the federal government does not have any record of the thousands of gun sales taking place at retail dealers every day. While the IRS maintains records on all business and individual incomes the federal government is barred from maintaining records on the purchase and whereabouts of millions of firearms.

Moreover, the ATF is constrained from organizing even those records that ATF is allowed to obtain from dealers. Federal law requires a dealer who goes out of business to send all sales records required to be kept by law to the ATF within 30 days.<sup>11</sup> However, the NRA succeeded in having Congress attach another rider to ATF appropriations legislation that prevents ATF from organizing the records in an easily accessible manner.<sup>12</sup> ATF is prevented from searching the data by the purchaser's name, making it useless for law enforcement trying to research the gun purchase histories of suspects or convicted felons, or suspects who may pose a danger to the community.

These nonsensical restrictions prevent ATF from maintaining the records it needs to quickly and effectively investigate corrupt dealers or track down law enforcement leads. Because records of gun sales remain with the tens of thousands of licensed dealers and not in a centralized federal database, every time local law enforcement needs information about the origin of a gun recovered in crime, ATF must painstakingly track the gun's path through the records of the manufacturer, distributor, and (often multiple) retailers. Irresponsible sellers also frequently lose gun sales records, making complete traces of those guns impossible. The cumbersome process slows law enforcement investigations and endangers public safety.

## THE SHORT LIFE OF GUN RECORDS

Since passage of the Brady Law in 1993, licensed dealers must conduct criminal history background checks utilizing the Federal Bureau of Investigation's National Instant Check System (NICS), to ensure that prospective gun buyers are not prohibited purchasers. If the background check determines that the purchaser is not prohibited, a record of the check, consisting solely of an identifier number assigned to the inquiry, is kept by the Department of Justice (DOJ). But the gun lobby's obsession with secrecy is even reflected in the legislative compromises which are part of the Brady Law – the statute requires all other information on the approved purchaser and the gun purchase to be destroyed, although it does not specify that the record destruction occur immediately after the sale is approved.<sup>13</sup> The record destruction requirement does not apply if the background check reveals that the purchaser is prohibited by law from buying a firearm.



Following implementation of NICS in 1998, DOJ kept the background check records on approved purchasers for six months to ensure that NICS was working properly and that felons and other prohibited purchasers were not mistakenly being approved.<sup>14</sup> In July 2000, the legality of the six-month policy was affirmed by a federal court of appeals against a legal challenge brought by the National Rifle Association.<sup>15</sup> In January 2001, DOJ issued a final rule shortening the record retention period to 90 days to take effect on March 1, 2001.<sup>16</sup> After various postponements, the 90-day rule finally went into effect on July 3, 2001.

Three days later, DOJ, under new Attorney General John Ashcroft (a recipient of strong NRA support in his Senate campaigns), issued a new proposed rule to shorten the period further from 90 days to 24 hours, citing the need to protect “the privacy interests of law-abiding citizens.”<sup>17</sup> While the proposed rule was still pending, the gun lobby’s allies in Congress attached a rider to an ATF appropriations bill that requires destruction of the records within 24 hours.<sup>18</sup> DOJ then issued a final rule implementing the 24-hour retention period effective July 20, 2004.

In a 2002 study, the General Accounting Office noted the dangers of requiring that NICS records be destroyed within 24 hours, concluding that such quick destruction would endanger public safety. GAO found that within one six-month period, “the FBI used retained records to initiate 235 firearm-retrieval actions, of which 228 (97 percent) could not have been initiated under the proposed next-day destruction policy.”<sup>19</sup> Yet, DOJ argued that the “privacy

interests of law-abiding firearms purchasers” required that NICS records be destroyed.<sup>20</sup> The gun lobby’s allies in Congress agreed, acting to put the priorities of the secrecy-loving NRA above the needs of law enforcement.

Secrecy also triumphed over law enforcement on the issue of multiple handgun sales records. It has long been recognized that multiple sales of handguns – defined in federal law as the sale of two or more handguns to the same buyer within a five business-day period – is a strong indicator that the purchaser intends to traffic the guns to the illegal market.<sup>21</sup> For this reason, federal law requires federally-licensed dealers to notify ATF of every multiple handgun sale they make.<sup>22</sup> Multiple sale reports are often starting points for investigations of gun trafficking.

Until the Brady Law was enacted, gun dealers were required to send multiple-sale reports only to ATF. The Brady Law imposed a new requirement that the dealer also send a copy of the report to state or local law enforcement authorities. In theory, this should allow state and local law enforcement to assist ATF or commence its own investigation. Incredibly though, the Brady Law also required the police to destroy the form and its contents within 20 days, a provision pushed by the gun lobby.<sup>23</sup> In short, although the state or local police may get notice of suspicious gun sales, they have only 20 days to act before they must destroy any information relating to it. **Once again, the gun lobby’s friends in Congress ensured that secrecy would trump the need for valuable information that the police could use to stop the flow of guns to criminals.**

---

## *Part Two*

---

# **THE CURTAIN OF SECRECY BEGINS TO LIFT: CRIME GUN TRACES AND WHAT THEY MEAN**

**O**ver the last decade, in particular, the curtain of secrecy over the gun industry began to lift on one issue of great consequence for public policy on firearms and crime. Through the gathering and dissemination of crime gun trace data, the close connection between the gun industry and the illegal gun market became clear for all to see. The trace data made it equally apparent that stronger regulation of the legal gun market would stem the flow of guns into the illegal market.

### **THE CRIME GUN TRACING PROCESS**

One of ATF's responsibilities is to trace firearms recovered by local law enforcement at crime scenes – a service that provides a valuable investigative tool for law enforcement. Analysis of crime gun traces allows ATF and state and local law enforcement not only to investigate specific gun crimes but also to identify the sources of guns used in crime.

The tracing process is the systematic tracking of a gun recovered in crime from its manufacture to the first purchase from a federally-licensed firearms dealer using records maintained by firearms manufacturers and sellers. Contrary to the gun lobby's frequent assertions that ATF often traces guns with no connection to crime, the Bureau itself defines the

universe of traced “crime guns” as “any firearm that is illegally possessed, used in a crime, or suspected by enforcement officials of being used in a crime.”<sup>24</sup> As the former Chief of ATF’s Crime Gun Analysis Branch has explained, “ATF only traces crime guns.”<sup>25</sup>

ATF also explains that:

**“Virtually every crime gun in the United States starts off as a legal firearm. Unlike narcotics or other contraband, the criminals’ supply of guns does not begin in clandestine factories or with illegal smuggling. Crime guns, at least initially, start out in the legal market, identified by a serial number and required documentation. This means that virtually every crime gun leaves some paper trail.”<sup>26</sup>**

The tracing process begins when law enforcement recovers a gun in the course of a criminal investigation and then contacts ATF’s National Tracing Center with a trace request, including information on the crime being investigated, the name of the gun’s manufacturer, the caliber, and its serial number, which is stamped on every gun when it is manufactured. (See Appendix I for copy of National Tracing Center Trace Request Form 3312.1). If the serial number on the gun has worn away or been damaged, so it is no longer legible, the gun cannot be traced. Also, guns manufactured before 1969 do not always have serial numbers and therefore ATF does not typically trace them.

In a typical trace, ATF will first check its records of out-of-business dealers and its multiple sales records. If the traced gun is not found in the out-of-business files or multiple sales records

(about 90% of the time),<sup>27</sup> ATF will then contact the manufacturer, asking for the name of the dealer or distributor to which the manufacturer first sold the gun. ATF then contacts that gun dealer or distributor and asks for records on to whom the gun was sold next, and on through the first retail sale by a licensed dealer.<sup>28</sup> Because there is no federal requirement that individuals or non-licensed dealers keep records of firearms sales, ATF usually cannot trace a gun past its first retail sale. The whole tracing process typically takes about ten days.

If ATF is able to find the last retail seller and identify the person who originally purchased the gun, this is a successful trace and the information is relayed back to local law enforcement. About 50% of attempted traces are not successful in identifying the first retail purchaser, for a variety of reasons, including the age of the gun, problems with the serial number, errors in the submission form, or the absence of proper record keeping by manufacturers, distributors or dealers.<sup>29</sup>

## **Early History of the Crime Gun Tracing System**

Shortly after passage of the 1968 Gun Control Act, the ATF established a system to respond to requests for traces of firearms. The system has been updated and improved over time through additions to the National Tracing Center facility, increased numbers of employees, and technological advances.

Until the last decade, law enforcement agencies did not routinely trace guns recovered in crime unless they needed the information to solve a particular crime. For example, when John Hinckley attempted to assassinate President Reagan on March 30, 1981, shooting the



President and his Press Secretary Jim Brady, and two law enforcement officers, the gun recovered at the scene was immediately traced through ATF's National Trace Center.

Analysis of crime gun traces also allows ATF and state and local law enforcement to understand the structure of, and identify patterns in, the illegal firearms market.<sup>30</sup> Tracing, for instance, can reveal that a purchaser is repeatedly buying firearms from a dealer, possibly indicating that the purchaser is illegally trafficking the guns, or that crime guns in one area are frequently coming from a particular dealer.<sup>31</sup> ATF has explained:

“Crime gun trace information is used for three purposes: (1) to link a suspect to a firearm in a criminal investigation; (2) to identify potential traffickers, whether licensed or unlicensed sellers; and (3) when a sufficiently comprehensive tracing is undertaken by a given community, to detect in-state and interstate patterns in the sources and kinds of crime guns.”<sup>32</sup>

However, ATF did not routinely use its database of trace requests to accomplish the third objective – discovering the sources of crime guns – in this early era.

The first time ATF used information on crime guns to study the broader issues of how and where criminals were obtaining guns was in 1973, in a study called “Project Identification.” Project Identification sought to collect data on guns recovered in crime in sixteen major cities.<sup>33</sup> Each city's police department kept track of all handguns recovered in crime from July to December 1973.

ATF received 10,617 crime guns for tracing and successfully traced 7,815. ATF used the statistics to develop a set of data that ATF and local law enforcement could use to discover the sources of crime guns.<sup>34</sup>

Among other conclusions in Project Identification, ATF found that “the percentage of crime handguns purchased interstate was directly proportional to the degree of local handgun control.”<sup>35</sup>

In New York City, for instance, only four percent of the handguns recovered in crime had been purchased from retailers in New York State. The rest had been trafficked from states with weaker gun laws. Almost 50 percent of the guns traced in New York City came from just four southern states – Florida, Georgia, South Carolina, and Virginia. The four states had few or no restrictions on handgun purchases in 1973.<sup>36</sup>

Another one of ATF's early efforts to study traces to identify patterns in crime guns was called “ATF's Project Detroit” – a joint firearms tracing project conducted with the Detroit Police Department in 1989.<sup>37</sup> The Detroit Police Department attempted to submit trace requests for every gun recovered in crime, which were then analyzed. The Project found that the majority of crime guns traced in Detroit were cheap, low-quality guns known as “Saturday Night Specials,” and also included many assault weapons. Thirteen dealers in Detroit were identified as suppliers to the illegal market.<sup>38</sup>

In 1991, the field division office of ATF in Boston embarked on a project similar to Project Identification. In this remarkable collaboration, known as the “Boston Gun

Project,” ATF worked with academic researchers, the Boston Police Department and other Massachusetts law enforcement agencies.<sup>39</sup> Boston law enforcement traced all firearms recovered in crime starting in January 1991. The data was analyzed to find strategies to reduce youth gun violence in Boston. The interagency task force identified ways to impede Boston’s illegal gun market and thereby reduce youth gun violence in Boston by attacking the supply of guns.<sup>40</sup> The task force identified several law enforcement strategies, many of which were implemented in later years, including: flagging for active investigation every trace that showed a time-to-crime of less than thirty months, using trace data to find patterns involving dealers, and flagging dealers for further investigation if they were associated with multiple crime gun traces.<sup>41</sup>

As a result of these projects, federal and state law enforcement, and the public, began to learn the value of crime gun trace data. During the Clinton Administration, the tracing of crime guns by ATF began to rise to an unprecedented level, as did our understanding of the illegal gun market.

### **Crime Gun Tracing is Expanded During the Clinton Administration**

Before 1994, gun manufacturers and sellers were not required by law to respond to ATF trace requests. The 1994 Violent Crime Control and Law Enforcement Act required all licensees to respond to trace requests within 24 hours and imposed sanctions if they were uncooperative.<sup>42</sup> For the first time, assisting ATF with trace requests became a legal duty of the gun industry.

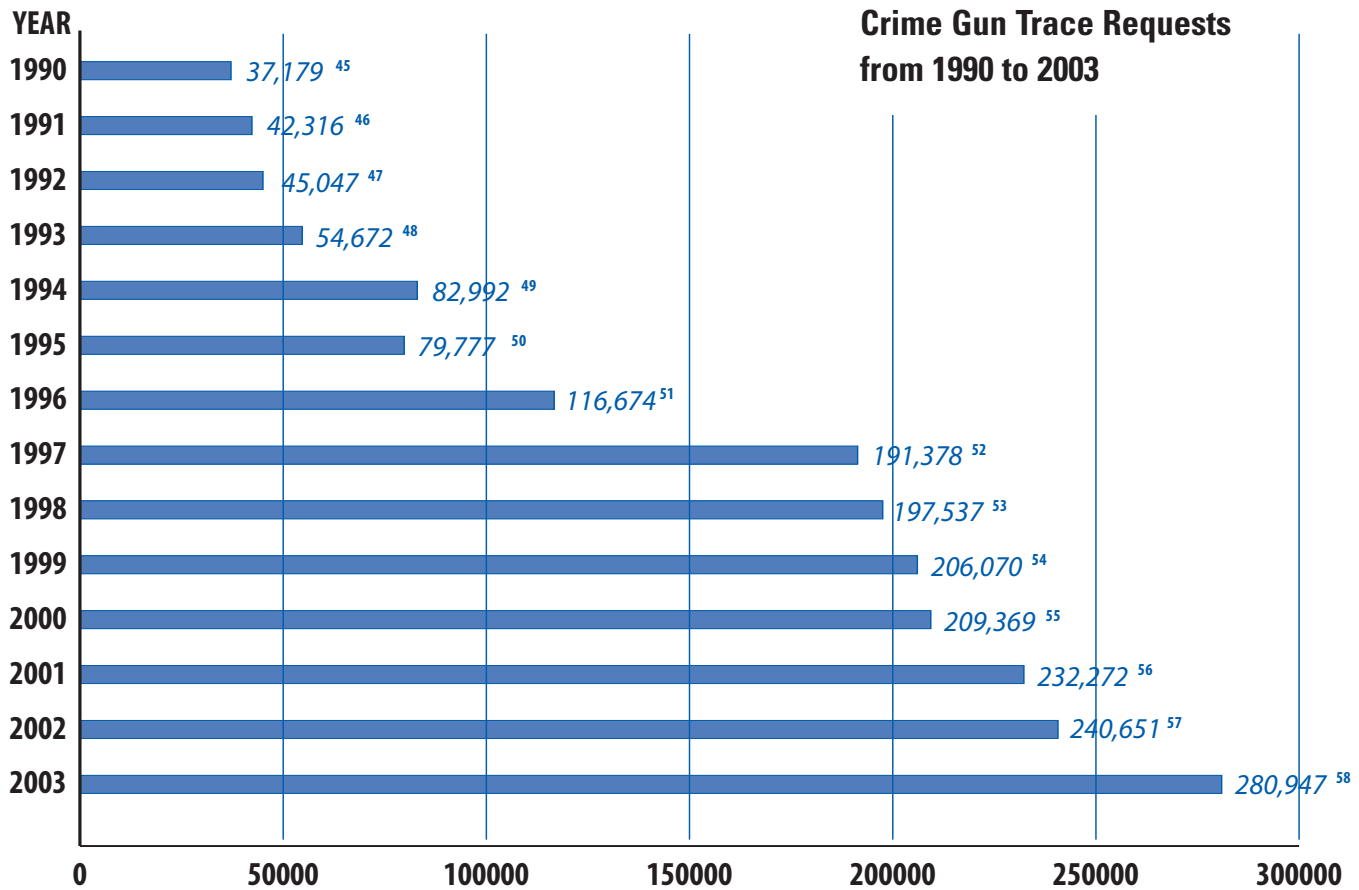
In 1994, ATF also embarked on an effort

to encourage law enforcement authorities to conduct “comprehensive tracing,” that is, to submit trace requests for all recovered crime guns. Under President Clinton, ATF began a concerted effort to not only increase the amount of crime gun tracing, but to improve the quality of trace data and educate law enforcement on the benefits of tracing. ATF conducted training seminars in 15 cities to educate police on the benefits of comprehensive tracing to identify patterns and trends in the illegal gun market. These efforts were part of the Administration’s emphasis on the prevention of illegal gun trafficking through increased investigative resources and regulation of gun dealers.<sup>43</sup>

In January 1994, ATF and governors and mayors from 14 southern and eastern states and the District of Columbia entered into a *Memorandum of Understanding to Combat Illegal Firearms Trafficking*. Each participating entity to the MOU agreed to comprehensively trace all firearms, establish communication and procedures for interagency cooperation, and develop a detailed strategy to thwart the illegal distribution and possession of firearms. The ATF Field Divisions in the various states each produced a report on the trace studies done in the first year.<sup>44</sup>

Also starting in 1994, ATF began using computers to help in the tracing process. Consequently, in 1994, the number of trace requests for crime guns began to increase significantly.

On July 8, 1996, comprehensive crime gun tracing received White House-level support as President Clinton announced ATF’s new *Youth Crime Gun Interdiction Initiative* (YCGII) in a press conference in the East Room of the White House:



“[ATF] has developed a pilot program that will trace all guns used in crime that are seized by Federal, State and local law enforcement officers, and work with trace information to help identify illegal gun traffickers . . . . By analyzing patterns of gun trafficking that exist in an area, we are developing more effective law enforcement strategies to target illegal gun traffickers for prosecution, particularly those who put guns into the hand of our Nation’s young people.”<sup>59</sup>

Seventeen cities initially agreed to trace all recovered crime guns and ATF assigned a special agent in each city to implement the program.<sup>60</sup> By 2000, 47 cities were participating.

Crime gun traces quickly rose to over 100,000 a year and soon thereafter to over 200,000 a year. The resulting database has become a rich source of information for guiding public policy and law enforcement efforts.

ATF was able to use the sizeable database of crime gun traces to make several findings on the source and diversion of illegal crime guns. ATF released this information to the public in a



series of annual YCGII reports from 1997 through 2002. (Although in 2002, ATF announced that 66 cities would be participating,<sup>61</sup> ATF has not released another report since July 2002, based on year 2000 trace data.) In 2000, the Secretary of the Treasury (of which ATF was a part at the time), explained the importance of the YCGII reports:

“The reports are a tool for law enforcement and prosecutors to identify local, regional, and national crime gun trends, and develop enforcement strategies tailored to the needs of specific areas. They are also useful to federally licensed firearms dealers who can use the information in the reports to develop sounder and safer business practices. The reports’ findings also inform the public about the crime gun problem and the enforcement activities addressing it.”<sup>62</sup>

Each report included a breakdown of results of crime gun tracing for the year for each participating city, including the number, type, and source state of crime guns recovered, the crimes associated with the traces, and information on how quickly the traced guns moved from sale to use in crime. The reports also drew conclusions from combined data nationwide.

Since the implementation of the initiative, several states have adopted laws requiring statewide comprehensive crime gun tracing, including California, Connecticut, Illinois, Maryland, New Jersey, and North Carolina.<sup>63</sup> Increased crime gun tracing has resulted in a database of over 2 million crime guns. This huge database of information has been of historic value

in painting a picture of the sources of illegal guns.

## **WHAT CRIME GUN TRACE DATA HAS TAUGHT US**

The rapid expansion of comprehensive crime gun tracing and the resulting trace database made possible an explosion of new learning about how the illegal gun market is supplied, with important implications for public policies to keep guns out of criminal hands.

### **Crime Guns Don’t Grow on Trees**

The gun lobby has long argued that because criminals get access to guns either by stealing them from legal gun owners or obtaining them on the “black market,” laws regulating sales of guns by licensed dealers can do nothing to curb the use of guns in crime. Crime gun trace data, however, has disproved these arguments. The data revealed that there is a rapid and continuous movement of large numbers of guns from licensed gun dealers into the illegal market. As ATF reported in its first report issued under the YCGII:

**“Many recovered firearms are rapidly diverted from first retail sales at Federally licensed gun dealers to an illegal market that supplies juveniles, youth and adults. This is indicated by the proportion of guns recovered by law enforcement officials that are new, that is, bought less than three years before recovery by enforcement officials. Experienced trafficking investigators have found that recovery of crime guns within three years is a significant trafficking indicator. New guns**

in juvenile or criminal hands signal direct diversion, by illegal firearms trafficking – for instance through straw purchases or off the book sales by corrupt FFLs [federally licensed dealers].”<sup>64</sup>

ATF later determined that approximately 31% of traced crime guns fit this category of “new” guns that likely were trafficked out of licensed dealers into the criminal market.<sup>65</sup> The trace data also revealed that 15% of crime guns were recovered within only one year of their last retail sale.<sup>66</sup> This short “time to crime” is particularly significant since guns may actually be used in crime long before they are recovered by police and traced. ATF trafficking investigations had long established the importance of corrupt gun dealers in aiding and abetting gun trafficking.<sup>67</sup> However, the trace data revealed, for the first time, that the trafficking of guns from licensed gun dealers was massive in scope. As Philip Cook of Duke University and Anthony Braga of

*Commerce in Firearms* explained that ATF was using firearms tracing to identify licensed dealers “associated with diversion of firearms to the illegal market on a nationwide basis. . . .”<sup>69</sup> The report identified a series of “trafficking indicators,” including several involving crime gun traces:<sup>70</sup>

- multiple crime guns traced to a dealer or first retail purchaser;
- short time-to-crime for crime guns traced to a dealer or first retail purchaser;
- incomplete trace results, due to an unresponsive dealer or other causes; and
- frequent multiple sales of handguns by a dealer, combined with crime gun traces.

The expansion of ATF’s crime gun tracing program also measured, for the first time, the impact of multiple handgun sales by gun dealers on the illegal market. Frequent multiple sales historically had been cited by ATF as an “indicator” of gun trafficking from a dealer.<sup>71</sup>

***“ Many recovered firearms are rapidly diverted from first retail sales at Federally licensed gun dealers to an illegal market that supplies juveniles, youth and adults...”***

— ATF, Crime Gun Trace Reports (2000)

Harvard University have written, the YCGII findings provide “indirect but quite compelling” evidence that “links sales by FFLs to criminal use” of guns, suggesting that “FFLs, straw purchasers, and traffickers play important roles in diverting guns to crime.”<sup>68</sup>

In February 2000, ATF issued its landmark report *Commerce in Firearms in the United States*, the most extensive ATF discussion of gun regulation in the Bureau’s modern history.

Crime gun tracing under the YCGII established that 20% of crime guns traced in the year 2000 originated with multiple sales by licensed dealers.<sup>72</sup> According to Professors Cook and Braga, “[t]race results suggest that handguns that were first sold as part of a reportable multiple sale are much more likely than others to move quickly into criminal use.”<sup>73</sup> This finding strongly suggests that preventing multiple sales should be a key component of a sound anti-trafficking strategy.



## A Few Bad Apples

Analysis of trace data by ATF and independent researchers has consistently yielded the startling finding that a tiny percentage of the Nation's licensed gun dealers contribute the vast majority of the Nation's crime guns.

This finding was first revealed in a 1995 report produced for ATF by a team of researchers at Northeastern University led by Dr. Glenn Pierce.<sup>74</sup> Their study used trace data to identify patterns of firearms trafficking. The report concluded that “[a]n extremely small number of FFLs [federal firearms licensees] are involved with a large, disparate number of firearms recovered at crime scenes.”<sup>75</sup> Indeed, the Northeastern study found that less than 1% of licensed gun dealers account for almost half of traced crime guns.<sup>76</sup>

Later analyses, using far more extensive trace data, confirmed these early findings. A report published by Senator Charles Schumer (D-NY) used 1998 trace data to identify 137 dealers nationwide that had sold more than 50 guns traced to crime. The 13 worst dealers were the source of 13,000 traced crime guns in that year.<sup>77</sup>

In the *Commerce in Firearms* report released in February 2000, ATF included an analysis of crime guns traced in 1998 which showed that **only 1.2% of dealers** – at that time 1,020 dealers<sup>78</sup> – **accounted for 57% of crime guns** in that year. A smaller subset of only 330 dealers – a fraction of 1% of the dealer population – accounted for about 40% of crime guns. Of equal significance, ATF found that **85% of licensed dealers had no crime gun traces** in 1998.<sup>79</sup> The trace data showed that a relatively small number of gun dealers was responsible for the diversion of a huge number of guns into the illegal market.

As a result of this evidence, ATF announced that it would conduct intensive inspections of the 1,020 retail dealers who contributed the majority of crime guns.<sup>80</sup> Each of those dealers had 10 or more annual traces. As discussed in greater detail in Part 3, according to internal ATF documents, these focused inspections revealed frequent violations of federal firearms laws by these “high-trace” dealers.

Upon the release of the *Commerce in Firearms* report in February 2000, ATF also, for the first time, publicly recognized that its trace data should be used by manufacturers of firearms to ensure retail sellers act responsibly to prevent the diversion of guns to the illegal market. The Bureau announced it would provide firearms manufacturers and importers, upon request, with a list by serial number of the firearms they sold that were traced as crime guns during the previous year. ATF stated that the list of crime guns “will enable the manufacturers and importers to police the distribution of the firearms they sell.”<sup>81</sup> In its annual reports issued as part of the YCGII, ATF repeatedly explained that one of the primary purposes of crime gun trace data is to “inform federal licensed firearms dealers of crime gun patterns, allowing them to build sounder and safer businesses.”

In 2001, as the Clinton Administration was leaving office, the Department of Justice released a detailed report that discussed the Administration's strategies to reduce gun violence.<sup>82</sup> One of DOJ's strategies to enforce laws that “keep guns out of the wrong hands” was to call on gun manufacturers to “self-police” their distribution chain, stating they “could substantially reduce the illegal supply of guns” by instituting controls on downstream sellers.<sup>83</sup> Specifically, DOJ reiterated its offer to manufacturers and importers for ATF to

supply them with crime gun trace data, to be used to identify and refuse to supply dealers and distributors that have a pattern of selling guns to criminals and straw purchasers.<sup>84</sup>

“The firearm industry can make a significant contribution to public safety by adopting measures to police its own distribution chain. In many industries, such as the fertilizer and explosives industries, manufacturers impose extensive controls on their dealers and distributors. Gun manufacturers and importers could substantially reduce the illegal supply of guns by taking similar steps to control the distribution of firearms.

\*\*\*

**“To assist industry efforts to keep guns from falling into the wrong hands, ATF will supply manufacturers and importers that request it with information about crime gun traces of the manufacturer’s or importer’s firearms.”<sup>85</sup>**

As detailed in the Brady Center’s 2003 report, *Smoking Guns: Exposing the Gun Industry’s Complicity in the Illegal Market*, gun makers declined ATF’s offer to share trace data to ensure safer distribution of firearms.<sup>86</sup>

In 2004, the advocacy group Americans for Gun Safety Foundation released a report, based on trace data introduced into evidence in a lawsuit brought against the gun industry by the NAACP, that named the gun dealers who sold the most guns traced to crime.<sup>87</sup> Dealers that had sold 200 or more crime guns from 1996 to 2000,

were listed by name and location in the report. The report noted that most of these high crime gun stores remained open and were rarely inspected by ATF. The publication of the report not only allowed local communities to know where high trace gun dealers were operating, but also handed the gun industry a specific list of dealers who were contributing the most guns to the illegal market.

## Guns Laws Work

Analysis of the crime gun trace data has also demonstrated that guns are diverted from licensed dealers in states with weak gun laws to the illegal market in states with strong gun laws. This pattern of interstate movement of crime guns is powerful evidence that strong state gun laws tend to deprive criminals of local sources of guns, requiring them to resort to out of state suppliers.

This pattern of interstate movement has been known since at least 1973 when, as noted above, it was identified by ATF’s analysis of trace data in Project Identification. The same pattern was revealed by the YCGII reports. For example, 84% of the crime guns recovered in New York City were first purchased from gun dealers outside New York State, primarily dealers in Southern states with weak laws.<sup>88</sup>

At the same time, crime guns in states with weak gun laws tend to be “homegrown,” that is, to originate with dealers in those states. Thus, over 80% of the crime guns in Atlanta, Gary, and Houston, for example, originated with gun dealers in their home states.<sup>89</sup>

ATF’s YCGII reports revealed that there were two significant interstate gun trafficking patterns: 1) many crime guns recovered in northeastern cities such as New York, Philadelphia, Baltimore, and Washington D.C.,



were first purchased from federally licensed gun dealers in southern states; and 2) many crime guns recovered in St. Louis and Chicago were also first sold in southern states.<sup>90</sup>

These patterns clearly indicate that strong state gun laws have an impact on the illegal gun market. If New York criminals could access local New York state sources of crime guns, they obviously would do so. The fact that their guns tend to originate from out-of-state gun dealers indicates that New York's strong laws are working to prevent the diversion of guns from New York gun dealers to the local criminal market. Although it is illegal under federal law for a New York resident to buy a handgun from a licensed dealer in another state, it is common for gun traffickers to recruit straw buyers in "source" states who can establish in-state residency to purchase handguns. The interstate crime gun pattern also contradicts the gun lobby's theory that the illegal gun market is supplied almost entirely by guns stolen from legal owners. If New York criminals obtained their guns by stealing them from that state's gun owners, the trace data would show that New York crime guns originated with the New York gun dealers from which law-abiding New Yorkers legally purchased their guns.

Using crime gun trace data, scholars Daniel Webster, Jon Vernick, & Lisa Hepburn of Johns Hopkins University determined that states with mandatory registration and licensing systems pushed criminals to obtain guns from states without such systems.<sup>91</sup> Their study showed that cities in states with registration and licensing laws

***One of the study's conclusions was that gun control policies work by forcing criminals to obtain guns where gun laws are weaker.***

had proportionally fewer guns recovered in crime originally purchased in that state. State laws requiring firearms purchasers to obtain a permit, or other license, or where guns must be registered, thereby making it easier for gun crimes to be investigated, make it significantly more difficult for criminals to obtain guns within the state. The study also confirmed that states with weak guns laws serve as sources for crime guns in other states – if a city is near a state with weak gun laws, the study found it was more likely that its crime guns came from the weak-gun-law state.

A later study by scholars Glenn Pierce, Anthony Braga, and Chris Koper similarly established that crime guns recovered in cities located in states with tight legal controls are more likely to be have been purchased first in other states.<sup>92</sup> **One of the study's conclusions was that gun control policies work by forcing criminals to obtain guns elsewhere where gun laws are weaker.**

Crime gun trace data also has been crucial in establishing the effectiveness of gun laws designed to curb interstate gun trafficking by curbing the large-volume handgun purchases that commonly supply trafficking operations.

Gun traffickers keep costs down and maximize profits by buying large numbers of guns, usually handguns, from licensed dealers. As discussed above, federal law imposes a special multiple sale reporting requirement because a multiple sale of handguns is a strong indicator of gun trafficking. Virginia, Maryland, and



California have passed legislation barring multiple sales by making it illegal for anyone to purchase more than one handgun in any 30-day period.<sup>93</sup> By preventing gun traffickers from obtaining many handguns at one time these laws are intended to reduce the profitability, and incidence, of gun trafficking.

Crime gun trace data was used to test the effectiveness of Virginia's legislation banning multiple sales in a study published in the Journal of the American Medical Association, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759 (1996), by Dr. Douglas Weil & Rebecca Knox, researchers at the Center to Prevent Handgun Violence (now the Brady Center).

In 1993, Virginia passed its law in response to the State's growing reputation as a principal source of guns to the illegal market in the northeastern United States. Using trace data released by ATF under the Freedom of Information Act, the Weil/Knox study showed that prior to the law, 38% of all guns originating in the southeast and traced in the northeastern United States (New York, New Jersey, Connecticut, Rhode Island, and Massachusetts) were purchased from Virginia gun dealers. After the law was passed, Virginia's share dropped to only 15.5%. This use of crime gun trace data provided hard evidence that preventing large-volume handgun sales can disrupt illegal gun trafficking.

A second trace data study by Dr. Weil of the Brady Center demonstrated the effectiveness of the Brady Law in reducing gun trafficking.<sup>94</sup> Prior to the enactment of the Brady Law, most states did not require background checks of gun purchasers from licensed dealers, making it easy for gun traffickers, even those with criminal

records, to buy guns by lying on the federal Firearms Transaction Record completed for every gun purchase. The Brady Law's requirement of a criminal background check made life more difficult for traffickers. The trace data revealed that after the Brady Law went into effect, there was a significant decline in gun trafficking out of states that had no background check requirement before the Brady Law.<sup>95</sup>

For example, Ohio gun dealers (a state without required background checks before the Brady Law) were two-thirds less likely to be the source of crime guns recovered in Michigan after the Brady Law took effect compared to crime guns purchased before its implementation. Similarly, Ohio guns were less likely to end up in crime in states as diverse as Missouri, New York and Maryland. Other traditional crime gun source states (e.g., Georgia, Kentucky, and Mississippi) also were shown to be supplying fewer crime guns following enactment of the Brady Law.<sup>96</sup>

A separate study by Professors Cook and Braga of guns traced to crime in Chicago similarly found that "the Brady Act made interstate gun running from lax-control states to Chicago less profitable by making it more difficult for traffickers to buy handguns from FFLs in those states."<sup>97</sup>

There is, therefore, no question that crime gun trace data has been invaluable in showing that strong state and federal laws regulating guns can reduce the flow of guns into the illegal market.

## Not All Guns Are Equal

One of the earliest, and most influential, uses of crime gun trace data by researchers established the frequent use by criminals of American-made "Saturday Night Special"



handguns – small, easily-concealable, low-quality, pistols and revolvers, also known as “junk guns.”

By analyzing crime gun trace data, ATF is able to identify which guns are most frequently recovered in crime – information that ATF regularly has released to the public. Starting in the early 1990s, ATF released data showing that Saturday Night Special-type handguns were repeatedly the most popular guns used in crime.<sup>98</sup> At least five out of the top ten guns recovered in crime every year from 1995 to 2000 were Saturday Night Specials.<sup>99</sup> Saturday Night Special-type handguns were also traced to crime much faster than other types of guns – an indicator that they were more popular with illegal gun traffickers.<sup>100</sup>

The ATF data established that Saturday Night Specials were disproportionately used in crime, when compared to the total numbers manufactured. In his seminal 1994 study, *Ring of Fire: the Handgun Makers of Southern California*, Dr. Garen Wintemute of the University of California at Davis examined trace data for the handguns produced by the cluster of California companies accounting for the majority of Saturday Night Special handguns. He found that the “Ring of Fire” guns were 3.4 times as likely to be involved in a crime as other types of handguns.

These studies helped propel bans on Saturday Night Specials in 34 California communities and eventually led to state legislation establishing safety and quality standards for handguns sold in California that effectively banned the California production of Saturday Night Specials.<sup>101</sup>

In the late 1980s and early 1990s, crime gun trace data also alerted the public to the growing threat posed by military-style

semiautomatic assault weapons in the hands of criminals. In 1989, Cox Newspapers reporters James Stewart and Andrew Alexander, assisted by former ATF official Robert Barnes, conducted a computer analysis of 43,000 crime gun trace requests for the years 1987-1988.<sup>102</sup> They found that assault weapons were far more likely to be traced to crime than conventional firearms and that the use of assault weapons in crime had increased more than 78% from 1987 to 1988. This study, following closely the use of an assault rifle to kill five children and wound 30 others on a Stockton, California schoolyard, ignited a national debate about the easy availability of these military-style guns.

ATF also relied on crime gun trace data in supporting a federal ban on assault weapons, eventually enacted into law as part of the 1994 Violent Crime Control and Law Enforcement Act. The Bureau released crime gun trace data to the public through reports, interviews, and testimony before Congress showing that assault weapons were used disproportionately by criminals and should be banned.

The ATF described these weapons as:

“large capacity, semi-automatic firearms designed and configured for rapid fire, combat use . . . . Most are patterned after machine guns used by military forces. They have distinct features which separate them from sporting firearms.”<sup>103</sup>

ATF’s report, *Assault Weapons Profile* (1994), revealed the total numbers of traces for each assault weapon that would be banned by name in proposed legislation. ATF also determined that, while assault weapons made up

only 1% of the guns in circulation in the United States at the time, they accounted for up to 8% of the guns traced to crime – making them “preferred by criminals over law-abiding citizens 8 to 1.”<sup>104</sup>

ATF data showing that assault weapons were disproportionately traced to crime was repeatedly cited during the debate on assault weapon legislation. ATF’s Director, John Magaw, testifying before the Subcommittee on Crime and Criminal Justice of the House Judiciary Committee, stated crime gun traces established that many of the top firearms traced to crime were assault weapons.<sup>105</sup>

A Congressional committee also relied on crime gun trace data when it reported that assault weapons “accounted for nearly thirty percent of all the firearms traced to organized crime, gun

trafficking and terrorist crimes during all of 1988 and the first quarter of 1989.”<sup>106</sup> Further Congressional reports referred to trace data in finding the “escalating use of semiautomatic assault weapons, the difficulties such weapons cause state police officers and the disproportionate link between such weapons and drug-

trafficking and violent crime.”<sup>107</sup>

Following enactment of the Federal Assault Weapons Act in 1994, the DOJ National Institute of Justice conducted a study, mandated

by Congress, of the short-term impact of the statute. The study found that the ban had “clear short-term effects on the gun market,” leading to weapons “becom[ing] less accessible to criminals” in the U.S. The study, based on crime gun trace data, found that crime gun traces for assault weapons dropped 20% in the year following enactment of the ban.<sup>108</sup>

The impact of the assault weapon ban ten years after its enactment was evaluated in *On Target: The Impact of the 1994 Federal Assault Weapons Act*, released by the Brady Center to Prevent Gun Violence. The former Chief of ATF’s Crime Gun Analysis Branch and the former Director of the ATF National Tracing Center were asked by the Brady Center to analyze crime gun trace data for the years 1990-1994 before the ban and for the years following the ban. They found that crime gun traces for assault weapons banned by name in the Act dropped 66% as a percentage of overall crime gun traces since the statute was enacted.<sup>109</sup> The study concluded that the assault weapons ban contributed to a substantial reduction in the use of assault weapons in crime.<sup>110</sup>

These findings were cited prominently by supporters of the ban in Congress, who sought legislation to re-authorize the ban beyond the 10-year lifespan provided in the original statute. Even though Congress failed to re-authorize the assault weapons ban before it expired in September 2004, crime gun trace data continues to be cited in the ongoing national debate over the use of assault weapons in crime.

## **WHY CRIME GUN TRACE DATA IS SO THREATENING TO THE GUN LOBBY**

Dr. Garen Wintemute of the University of California at Davis has written that, “trace data are an unsurpassed way of studying guns used in crime.”<sup>111</sup> The use of crime gun trace data by

**Crime gun trace data answers the question the gun lobby does not want to be asked: Where do illegal guns come from?**





scholars, advocacy groups, Members of Congress, the press, and ATF itself, has revolutionized our understanding of the illegal gun market and how it is supplied. For this reason, its release to the public has been a substantial threat to the National Rifle Association and the gun industry.

First, crime gun trace data directly challenges the gun lobby's claim that gun laws can have no effect on criminal access to guns because criminals either steal guns from legal owners or obtain them on the "black market." Trace data shows that the "black market" itself is largely the product of the continuous and massive diversion of guns from licensed dealers. **Crime gun trace data answers the question the gun lobby does not want to be asked: Where do illegal guns come from?**

Second, crime gun trace data directly challenges the gun lobby's longstanding mantra that gun laws can't work because they only affect law-abiding citizens, not criminals. Crime gun tracing studies show that gun laws, by regulating the behavior of gun sellers and buyers in the legal market, have a profound impact on access to guns by criminals in the illegal market.

Third, crime gun trace data shows that some classes of firearms, including "Saturday Night Special" handguns and semi-automatic assault weapons, have a special appeal to the criminal market. By continuing to manufacture and sell such weapons to the general public, the gun industry reveals that it is prepared to exploit the highly-profitable illegal market by designing and selling products that are disproportionately used in crime.

Finally, the trace data has provided powerful evidence of the gun industry's complicity in fueling the illegal market. It is now clear that a

relatively small number of readily identifiable licensed gun dealers are the source of most guns used by criminals. This raises the obvious question: Why are gun manufacturers and distributors continuing to use these high-risk dealers to sell their guns? The answer appears obvious. Every gun sold to a gun trafficker is as profitable as a gun sold to a law-abiding sportsman. The industry has a vested financial interest in the continued flow of guns from its licensed dealers into the criminal market.

Perhaps most threatening to the gun industry is the risk that its choice to use high-risk dealers, as revealed by crime gun trace analysis, may expose it to legal liability to those injured by guns trafficked into the illegal market.

In 2003, a federal judge found that the gun industry had contributed to a public nuisance in New York City by ignoring the glaring results of crime gun trace data studies. The court's opinion, in a case brought by the NAACP against numerous gun manufacturers and distributors, relied on trace data in its finding that the industry could shut down the flow of guns to high-risk retailers.<sup>112</sup>

"If defendants had studied available trace request data and acted upon it to better control its downstream customers, they could have used the information to prevent fear and injury to the NAACP and its members and potential members in New York. This information was and is available to defendants."<sup>113</sup>

The court condemned the gun industry for its practices, but found that the NAACP could not recover for its injuries because it had not

suffered special injuries different from those of the general public. The writing on the wall for the industry was clear – if future plaintiffs were able to rely on the crime gun trace studies, a court may very well rule that the gun industry had to take responsibility for its actions.

The NRA and the gun industry responded to the threat in two ways. First, for six years they lobbied Congress for special interest legislation exempting the gun industry from civil liability rules applicable to every other industry. This effort finally succeeded when President

George W. Bush signed into law the misnamed “Protection of Lawful Commerce in Arms Act (CAA)” in October 2005. Second, they pushed to shut down public access to crime gun trace data. The gun lobby knew that the proposed CAA would limit, but not completely preclude, liability actions against the industry. It also knew that the threat to its interests posed by public access to the trace data was not limited to potential legal liability. The trace data exposed the gun industry as part of the problem of illegal guns. This was too much truth for the gun lobby to bear.

---

## ***Part Three***

---

# **THE CURTAIN FALLS ON THE TRUTH - HIDING CRIME GUN TRACE DATA FROM THE PUBLIC**

**A**s of the end of the Clinton Administration, it was obvious that the continued release of crime gun trace data by ATF was a clear and present danger to the NRA and the gun industry. The NRA had boasted that if George W. Bush became President, it would be “working out of their [White House] office.”<sup>114</sup> In hindsight, that boast hardly seems exaggerated. On gun policy, the Bush Administration has consistently done the gun lobby’s bidding. Beginning with the 2000 election, and continuing to the present day, the Bush Administration and the gun lobby’s allies in Congress have drawn the curtain down on ATF trace data and, with it, the truth about guns and crime.

### **ATF FALLS SILENT ABOUT CRIME GUN TRACES**

When George W. Bush became President, ATF ceased its release of valuable crime gun trace information. The landmark *Commerce in Firearms* report from February 2000 was originally intended as the first in an annual series “that will present and analyze data collected by ATF and other Federal agencies relating to the firearms industry and its regulation.”<sup>115</sup> ATF has released only one such report since then - *Firearms Commerce in the United States (2001-2002)* - containing no trace data or analysis whatsoever.

The 2000 version of the report had explained that analysis of the trace data had “allowed

ATF to strengthen both its criminal and regulatory enforcement programs.”<sup>116</sup> The report included extensive discussions of “New Methods of Keeping Firearms Out of the Hands of Criminals and Others Not Legally Entitled to Possess Them,” and “Ensuring Compliance by Licensed Retail Dealers.” These sections included “The Illegal Market in Firearms,” “The Growth of the Firearms Tracing System,” “Trace Analysis and the Identification of Firearms Traffickers,” and “Crime Gun Traces as Indicators of Illegal Trafficking.”

None of these subjects were even mentioned in the 2001-2002 report. There was no discussion of attempting to identify firearms traffickers or the sources of illegal firearms, or even of ATF’s largest firearms task – inspecting firearms dealers. The Bush Administration ATF was careful to exclude anything that could possibly be viewed as threatening to the gun industry,

**Of the  
approximately  
1,000 dealers with  
10 or more traces  
in 1999, 75% were  
found by ATF to  
have violated the  
Gun Control Act**

instead noting the ATF’s feel-good efforts of “reaching out to strengthen and develop new working relationships with the firearms industry and consumers.”<sup>117</sup>

Both versions of this report have since been taken down from ATF’s website, while other publications from as far back as 1995 remain posted.<sup>118</sup> In contrast, ATF’s Arson and Explosives programs has continued to release

annual reports through 2006.<sup>119</sup>

In addition, the annual reports issued by ATF under its historic YCGII program have come to a halt. The last YCGII report to the public was issued in July 2002, and was based on trace data from 2000. The YCGII reports – covering traces completed during the years 1997-2000 – quantified, for the first time, the massive and rapid movement of guns from licensed dealers into crime in major American cities. ATF has now fallen silent on the close connection between licensed gun dealers, gun trafficking and the illegal market.

## **ATF MAKES EXCUSES FOR THE GUN INDUSTRY**

Under the Bush Administration, ATF has applied a starkly revisionist meaning to crime gun trace data.

As discussed above, when ATF issued its February 2000 report, *Commerce in Firearms*, the Bureau announced to the public the striking finding that only 1.2% of federally licensed firearms dealers, or approximately 1,000 dealers, accounted for 57% of crime gun traces by ATF in 1998. Those 1,000 dealers had 10 or more crime gun traces in 1998, while 85% of licensed dealers typically have no traces during a given year. These findings strongly suggested that a relatively small group of identifiable dealers are engaged in business practices that facilitate gun trafficking into the illegal market. They also suggested that gun manufacturers, by using crime gun trace information, can easily identify, and discipline, their retail dealers who are contributing disproportionately to the illegal market.

But gun makers have instead made a conscious business decision to turn a blind eye



***“Sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers.”***

– ATF, Report to the Secretary on Firearms Initiatives (2000)

to these high-risk dealers, enabling the entire industry to continue to profit from the supply of guns to the illegal market. The industry’s excuse is its insistence that a high number of crime gun traces is not an indicator of gun trafficking because large volume dealers “often have more guns traced to them simply because they sell more guns than smaller FFLs.”<sup>120</sup>

In its allocation of enforcement resources, ATF had, of course, taken the view that a high number of crime gun traces was significant, without regard to dealer sales volume. In February 2000, upon release of *Commerce in Firearms*, the Bureau announced that dealers with ten or more traces to them in 1999 would be subject to intensive inspections, no matter what their level of sales volume.<sup>121</sup>

## ATF'S REPORT TO THE SECRETARY ON FIREARMS INITIATIVES, NOVEMBER 2000

Among the redacted text ATF withheld from the public was data about the relationship between traces and sales volume:

The Appendix is a table summarizing the results of the focused inspection initiative. The most significant findings from the inspections are set forth below.

- **Large number of missing guns.** [REDACTED] ATF will compare information about each of these missing firearms to data in the Firearms Tracing System to see if we can develop any investigatory leads.
- **Significant problems in complying with recordkeeping requirements.** [REDACTED]
- **Sales to potential traffickers and potentially prohibited persons.** [REDACTED]
- **Completion of previously unsuccessful crime gun traces.** [REDACTED]
- **Adverse administrative proceedings.** As a result of the focused inspections, 45 percent of the inspected dealers were recommended for follow-up administrative action, including 2 percent for license revocation. It should be noted that 60 percent of the uncooperative dealers were recommended for follow-up action, including 17 percent for whom license revocation was recommended. [REDACTED]

### Demand Letter Initiative

The demand letter initiative entailed the issuance, to FFLs who had been uncooperative in response to trace requests, of letters requiring the submission of all their firearms transaction records for the previous 3 years, with monthly reports to be made thereafter. Additionally, demand letters requiring the submission of records concerning the acquisition of used guns were

The Appendix is a table summarizing the results of the focused inspection initiative. The most significant findings from the inspections are set forth below.

- **Large number of missing guns.** Nearly half (47 percent) of the dealers had at least one inventory discrepancy. While the majority of discrepancies were resolved through the inspection process, approximately 13,271 missing guns could not be accounted for by 202 licensees. Further, 16 licensees each had more than 200 missing guns. ATF will compare information about each of these missing firearms to data in the Firearms Tracing System to see if we can develop any investigatory leads.
- **Significant problems in complying with recordkeeping requirements.** More than 57 percent of the inspected dealers had at least one violation relating to a failure to properly execute the required ATF Form 4473, and 54 percent of the dealers failed to maintain a complete and accurate acquisition and disposition record. In addition, 22 percent of the dealers had violations of the multiple handgun sales reporting requirement and 15 percent of the dealers had recordkeeping violations relating to the required background check under the Brady Act.
- **Sales to potential traffickers and potentially prohibited persons.** Inspections identified sales to more than 400 potential firearms traffickers and nearly 300 potentially prohibited individuals, resulting in 691 referrals being sent to ATF special agents for further investigation. The overall ratio of trafficking referrals to licensees was more than 3 times higher in the group of licensees with 10 or more firearms traces with a short time-to-crime than in the group of licensees who did not have at least 10 traces with a short time-to-crime.
- **Completion of previously unsuccessful crime gun traces.** Inspectors were able to resolve 76 percent of the previous year's unsuccessful traces associated with the inspected dealers, for a total of 1,336 completed traces.
- **Adverse administrative proceedings.** As a result of the focused inspections, 45 percent of the inspected dealers were recommended for follow-up administrative action, including 2 percent for license revocation. It should be noted that 60 percent of the uncooperative dealers were recommended for follow-up action, including 17 percent for whom license revocation was recommended. By comparison, 47 percent of the dealers with 10 or more short time-to-crime traces and 43 percent of the remaining dealers with 10 or more traces were recommended for some sort of follow-up administrative action, with less than 2 percent of the dealers in these two groups recommended for revocation.

### Demand Letter Initiative

The demand letter initiative entailed the issuance, to FFLs who had been uncooperative in response to trace requests, of letters requiring the submission of all their firearms transaction records for the previous 3 years, with monthly reports to be made thereafter. Additionally, demand letters requiring the submission of records concerning the acquisition of used guns were



In a lawsuit against the gun industry in which Brady Center lawyers represent the City of New York, pretrial discovery unearthed an internal ATF report about the results of these intensive inspections of high-trace dealers. *Report to the Secretary of the Treasury on Firearms Initiatives*, issued in November 2000, concluded that “sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers.” Although they accounted for more than 50% of crime gun traces in 1999, these high-trace dealers accounted for less than 20% of the guns sold in that year.<sup>122</sup>

ATF's study also confirmed a strong association between a high number of crime gun traces and dealer violations of federal gun laws. Of the approximately 1,000 dealers with 10 or more traces in 1999, 75% were found by ATF to have had violations of the Gun Control Act, including large numbers of missing guns, “significant” recordkeeping problems, and sales to potential gun traffickers and prohibited persons.<sup>123</sup> By way of contrast, in 1998, ATF inspected a random sample of dealers (without regard to number of traces) and found that only 37% had violated federal law. The ATF also found that dealers with 10 or more traces had “a substantial likelihood that the used guns they sell are also being used in crime.”<sup>124</sup>

- 14 -

guns per year and has been in business for 2 years than if he sells 5,000 guns per year and has been in business for 20 years. Similarly, if the set of dealers accounting for [redacted] traces also accounts for [redacted] firearms sales, then the number of traces alone is not as significant.

When the CIF report was issued, we did not have any data regarding the total sales volume [redacted]. Accordingly, one of the goals of the focused inspections was to obtain data regarding the sales volume of the dealers who were the subject of the focused inspections.

The 1,012 licensees who were inspected during the focused inspection initiative constituted approximately 1.2 percent of the approximately 81,325 dealers in 1999. From the focused inspections, we have learned that [redacted]

Accordingly, it is apparent that sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers.

#### B. The Licensees Subject to the Focused Inspections Had Significantly Higher Rates of GCA Violations than the Random Sample of Licensees Inspected in 1998

Because sales volume alone did not explain why the inspected licensees accounted for a disproportionate number of crime gun traces, we looked at prior inspection results for a randomly selected group of licensees to see how they differed from the results of these “focused” inspections [redacted]

In 1998, ATF selected a random sample of 752 dealers to inspect, using a uniform workplan and questionnaire to ensure that the information gathered was consistent.<sup>25</sup> [redacted]

In the 1998 sample, approximately 37 percent of the inspected dealers were found to have violations during inspection. By contrast, in the focused inspections that are the subject

<sup>25</sup> See *Commerce in Firearms in the United States*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, February 2000, p. 1 (estimating that each year approximately 4.5 million new firearms and 2 million secondhand firearms are sold by retail licensees).

<sup>26</sup> See *Operation Snapshot: An Analysis of the Retail Regulated Firearms Industry*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 2000.

63 65

20

- 14 -

guns per year and has been in business for 2 years than if he sells 5,000 guns per year and has been in business for 20 years. Similarly, if the set of dealers accounting for 57 percent of traces also accounts for 57 percent of all firearms sales, then the number of traces alone is not as significant.

When the CIF report was issued, we did not have any data regarding the total sales volume of the 1.2 percent of retail dealers who were responsible for 57 percent of the successful crime gun traces to active retail dealers in 1998. Accordingly, one of the goals of the focused inspections was to obtain data regarding the sales volume of the dealers who were the subject of the focused inspections.

The 1,012 licensees who were inspected during the focused inspection initiative constituted approximately 1.2 percent of the approximately 81,325 dealers in 1999. From the focused inspections, we have learned that these dealers sold approximately 1.2 million, or less than 20 percent, of the approximately 6.5 million guns that were sold in the 12-month period preceding the inspection initiative.<sup>25</sup> As a group, however, these dealers accounted for more than 28,000 crime gun traces in 1999, which amounts to more than 50 percent of the 55,967 successful crime gun traces to active retail dealers for that year. Accordingly, it is apparent that sales volume alone does not account for the disproportionately large number of traces associated with these firearms dealers.

#### B. The Licensees Subject to the Focused Inspections Had Significantly Higher Rates of GCA Violations than the Random Sample of Licensees Inspected in 1998

Because sales volume alone did not explain why the inspected licensees accounted for a disproportionate number of crime gun traces, we looked at prior inspection results for a randomly selected group of licensees to see how they differed from the results of these “focused” inspections in which licensees were selected on the basis of number of crime gun traces and lack of cooperation with crime gun trace requests.

In 1998, ATF selected a random sample of 752 dealers to inspect, using a uniform workplan and questionnaire to ensure that the information gathered was consistent.<sup>26</sup> These dealers were not selected on the basis of crime gun trace numbers. While the methodology used for the 1998 inspections was not identical to that used in the FY 2000 focused inspections, a comparison of the results is nonetheless instructive and reveals that the licensees inspected during the focused inspections had a significantly higher rate of GCA violations than those inspected during the 1998 random inspections.<sup>27</sup>

In the 1998 sample, approximately 37 percent of the inspected dealers were found to have violations during inspection. By contrast, in the focused inspections that are the subject

<sup>25</sup> See *Commerce in Firearms in the United States*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, February 2000, p. 1 (estimating that each year approximately 4.5 million new firearms and 2 million secondhand firearms are sold by retail licensees).

<sup>26</sup> See *Operation Snapshot: An Analysis of the Retail Regulated Firearms Industry*, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 2000.

SAAMI 003787



Although the *Report to the Secretary* was an internal ATF document, it was obtained by the Brady Center through a subpoena in New York City's lawsuit issued to the Sporting Arms and Ammunition Manufacturers' Institute (SAAMI), an industry trade association. The presence of this internal government document in SAAMI's files is significant for two reasons. First, it means that at the same time that the gun industry was arguing that high dealer traces could be explained by high sales volume, it had in its possession an ATF study proving the opposite. Yet, the gun industry has never wavered from its insistence that high numbers of traces mean nothing, arguing in court documents that trace requests "depend on the volume of the retailer's business – the more sales made, the more traces received."<sup>125</sup>

Second, the presence of the ATF report in the files of SAAMI obviously suggests that ATF

shared it with the gun industry. ATF's willingness to share this particular report on trace data was, however, selective. When the Brady Center obtained a copy of the same *Report to the Secretary* in 2005 pursuant to a request under the Freedom of Information Act, the report was heavily redacted. **Among the redactions was the data about the relationship between traces and sales volume.** Apparently ATF, under the Bush Administration, was willing to share this sensitive data with the gun industry, but not with the general public.

Was the Bush Administration ATF trying to keep this information from the public to protect the gun industry? By hiding this report from the public, ATF would avoid publicly contradicting the gun industry's line that high trace numbers might simply mean high sales volume.

### Ten Worst Bad Apple Gun Dealers in America

(based on crime gun trace data from 1989 to 1996)

1. Badger Outdoors, Inc. West Milwaukee, WI	554 guns traced to crime.
2. Realco Guns, Inc., Forestville, MD	518 guns traced to crime.
3. Southern Police Equipment Co. Inc., Richmond, VA	447 guns traced to crime.
4. Atlantic Gun & Tackle, Bedford Heights, OH	426 guns traced to crime.
5. Colosimo's Inc., Philadelphia, PA	425 guns traced to crime.
6. Don's Guns and Galleries Inc., Indianapolis, IN	393 guns traced to crime.
7. Breit & Johnson Sporting Goods Inc., Elmwood, IL	347 guns traced to crime.
8. Trader Sports Inc., San Leandro, CA	337 guns traced to crime.
9. Miller's Dealers Outlet, Tucson, AZ	297 guns traced to crime.
10. Turner's Outdoorsman, Chino, CA	251 guns traced to crime.

In 2003, the ATF went a step further in publicly adopting the industry's line, by stating the very opposite of what ATF's own *Report to the Secretary* had found. The statement was made in an ATF press release attacking the Brady Center. In July 2003, the Brady Center released a list of the "Ten Worst Bad Apple Gun Dealers in America." These were the ten dealers with the highest number of crime gun traces during the period 1989-1996, the most recent years the crime gun trace database was made available to the public under FOIA.

In response to the Brady Center's report, ATF issued an extraordinary press release attacking the Center's use of crime gun trace data. ATF's release stated the Center's use of the data was "misleading" because "other factors including high volume of sales" could contribute to a dealer's high crime gun trace count. ATF's release further stated that "large volume gun dealers will by their very frequency of sales have more guns come to the attention of law enforcement than a dealer who sells relatively few firearms." Of course, ATF released no information showing that the dealers with the highest trace numbers were also the highest volume gun sellers, because its own data showed the opposite.

Not only did ATF have its own hard evidence that the concentration of crime gun traces in a small number of dealers could not be explained by the sales volume of those dealers, but long before ATF issued its 2003 press release attacking the Brady Center, independent research confirmed it.

An article in the *Journal of the American Medical Association* by Dr. Garen Wintemute at the University of California at Davis in 2000 found that a dealer's volume of total guns sales could not account for the differences in the

number of handguns traced to crime.<sup>126</sup> The study compared crime gun trace data to data from the California Department of Justice on handgun sales for all licensees from 1996 to 1998, and found that the number of traced guns varied substantially among dealers with similar sales volumes. The study showed that a small minority of firearms dealers are associated with more handgun traces than would be predicted by their sales volume, and those dealers accounted for a substantial majority of all traced handguns.<sup>127</sup>

A later study by Wintemute and Philip Cook of Duke University used ATF trace data to make similar findings. Using ATF crime gun trace data and handgun sales data from the California Department of Justice from 1996 to 2000, they determined predictors to identify high-risk dealers, including a high number of failed background checks for potential purchasers, and whether the dealer is a pawnbroker.<sup>128</sup> The researchers also confirmed that "among licensed retailers of handguns in California, the number of guns sold was an inadequate predictor of the number of guns subsequently linked to violent and firearm related crimes."

Yet, despite the evidence, in 2003 ATF publicly supported the industry's insupportable contention that high trace numbers reflect only high sales volume and are not an indicator of a dealer's use of business practices that facilitate trafficking to the illegal market.

## **CONGRESS ACTS TO BLOCK RELEASE OF CRIME GUN TRACE DATA – THE STORY OF THE TIAHRT AMENDMENT**

ATF has historically released raw crime gun trace data to the public through the Freedom of Information Act (FOIA). The purpose of





FOIA is to allow the public to act as a watchdog – shedding light on an agency’s performance of its statutory duties. ATF is required to release requested records to the public unless the records meet certain narrow exemptions. As discussed above, ATF produced raw crime gun trace data to, for instance, researchers Douglas Weil and Rebecca Knox for their study on the effect of Virginia’s one-handgun-a-month law,<sup>129</sup> and to Cox Newspapers for its study on the use of assault weapons in crime.<sup>130</sup>

However, ATF also has declined to release certain parts of the trace database, arguing that the redacted data fits under FOIA’s narrow exemptions. In one such case, involving trace data sought by the City of Chicago to support its public nuisance lawsuit against the gun industry,<sup>131</sup> ATF’s unjustified withholding of certain data led to a successful court challenge against ATF, and then to Congressional action that effectively has shut down public access to crime gun trace data.<sup>132</sup>

In March 2000, the City of Chicago made a request to ATF under FOIA seeking records on firearms traces and multiple sales both nationwide and in Chicago from 1992 to the present. The City sought the information to gain information on local and nationwide crime gun trafficking patterns and to support a lawsuit it had filed against the gun industry in November of 1998. The suit had charged various gun manufacturers, distributors, and suburban Chicago dealers with creating a public nuisance by marketing firearms to City residents where their possession would be unlawful.

Before bringing suit, Chicago law enforcement ran a “sting” of a dozen suburban Chicago dealers and found that they were willing to sell guns openly to straw buyers who were

seeking to buy guns for criminals in Chicago.

ATF produced part of the data requested, but withheld dealer names, purchaser names, serial numbers of the guns recovered, and the recovery locations. The redactions made the data useless for Chicago’s investigation purposes. Even though Chicago needed the data to assist law enforcement, and even though the City did not request any records that had been coded by ATF as “highly sensitive,” ATF still argued that it was allowed to block the release of data because it “could reasonably interfere with enforcement proceedings.”<sup>133</sup>

Chicago was forced to file suit against ATF in June 2000 to require ATF to turn over all the documents requested. The case lasted for over five years, including an appeal to the United States Supreme Court, and three separate rulings by the United States Court of Appeals for the Seventh Circuit.

In all of the rulings, the trial court and the appeals court rejected ATF’s arguments that releasing the records would hinder law enforcement efforts. In a 2002 ruling the Seventh Circuit found that ATF’s arguments were “based solely on speculation:”

“ATF has provided us with only far-fetched hypothetical scenarios; without a more substantial, realistic risk of interference, we cannot allow ATF to rely on this FOIA exemption to withhold these requested records.”<sup>134</sup>

In particular, the Court found that the data “reveals *nothing* about any potential or ongoing investigation,” and “it is highly improbable that any revelation of this information could endanger an investigation.”<sup>135</sup>

The Court of Appeals also found that there was no privacy interest in the requested records and that, as had been shown time and time again, “there is strong public policy in facilitating the analysis of national patterns of gun trafficking.”<sup>136</sup> The Court ruled that the ATF was required to produce all the information requested.

ATF appealed the Seventh Circuit’s ruling to the United States Supreme Court and the Court granted *certiorari*.<sup>137</sup> While the appeal to the Supreme Court was pending, Congress stepped in at the urging of the gun lobby. Rep. Ernest Istook Jr. (R-OK), a repeated recipient of NRA political contributions, inserted into ATF’s 2003 appropriations bill<sup>138</sup> a provision designed to prohibit ATF from using any appropriated funds “to take any action based upon any provision [of FOIA]” for requests from the trace database and multiple sales database.<sup>139</sup>

The technique of inserting substantive provisions into appropriations legislation is a favorite tool of special interest lobbyists.<sup>140</sup> Because of its incredible length, 544 pages for the Consolidated Appropriations Act of 2003, for example, Members of Congress cannot possibly know the details of every line of an appropriations statute. Unlike other legislation, riders to appropriations bills also do not regularly undergo scrutiny in congressional committees or have full floor debate. Appropriations bills are also often acted on quickly, out of necessity to put funding in place for the next year, which provides little opportunity for true deliberation. All of this

allows significant changes in policy to be made without public input or legislative accountability.<sup>141</sup>

The appropriations process is a perfect vehicle for passing special interest legislation that would not survive as a stand-alone bill.<sup>142</sup> Consequently, the gun lobby’s allies in Congress have historically used the appropriations process as an opportunity to slip in amendments restricting ATF’s enforcement activities. As noted, they have used this technique to prevent ATF from obtaining records from gun dealers,<sup>143</sup> or maintaining criminal background check records beyond 24 hours.<sup>144</sup> Even though riders in appropriations bills can change or be removed in subsequent fiscal years, frequently they become entrenched in the legislation and survive year after year; some riders restricting ATF have been in place since the 1970s.

Rather than attempting to actually amend the Freedom of Information Act, the gun lobby chose the easier route of quietly slipping in a rider without having to explain its actions. The gun lobby could get around the pesky FOIA statute, which demands public disclosure, without any committee hearings or reports and without the public noticing that the worst actors in the gun industry were being helped at the expense of the public’s right to know.

The 2003 Istook rider was written to allow ATF to continue giving out only the trace and multiple sale data that it was previously willing to disclose under FOIA. The

***“I wanted to make sure I was fulfilling the needs of my friends who are firearms dealers. NRA officials were helpful in making sure I had my bases covered.”***

— Rep. Todd Tiahrt (R-KS)



rider was intended to bar disclosure of, for example, the names of gun dealers that had sold guns traced to crime, as well as other information about those crime guns. The purpose was to weaken the City of Chicago's suit and the public's right to know the source of crime guns.

Following enactment of the 2003 rider, the Supreme Court remanded the Chicago FOIA case back to the Seventh Circuit to determine the effect of the rider on the Chicago FOIA request. But before the appeals court was able to rule on the effect of the 2003 legislation, Congress acted again.

In July 2003, Rep. Todd Tiahrt (R-KS), a long-time ally of the NRA, added an amendment to the 2004 ATF appropriations bill. The Tiahrt Amendment, as it and its succeeding versions are now known, was drafted to prevent ATF from spending any money to release any crime gun trace data or multiple sales data requested under FOIA, even if ATF previously had disclosed that type of data.<sup>145</sup> Even though ATF had always made some portion of the crime gun trace data available to the public, as shown by the numerous public uses of the data described above, the 2004 amendment barred ATF from further releasing trace or multiple sale data under FOIA.

Rep. Tiahrt's colleagues on the House Appropriations Subcommittee on Commerce, Justice, and State expressed "surprise" at the way the amendment was being offered.<sup>146</sup> The chair of the Subcommittee, Rep. Frank Wolf (R-VA), objected to the amendment, saying he had not had time to review it.<sup>147</sup> Yet, Rep. Tiahrt refused to withdraw the amendment and won passage on a 31 to 30 vote in the House Appropriations Committee. The Washington Post reported that, "before the vote, Tiahrt assured colleagues the NRA had reviewed the language." Tiahrt was

quoted as saying, "I wanted to make sure I was fulfilling the needs of my friends who are firearms dealers. NRA officials were helpful in making sure I had my bases covered."<sup>148</sup>

The legislation was indeed an attempt to help the NRA and the gun lobby, by not only thwarting Chicago's case, but by preventing anyone from obtaining trace data through FOIA. The threat of more public reports, based on analysis of trace data, linking the gun industry to supply of the illegal market of guns, was too great.

Despite the Tiahrt Amendment, Chicago's lawsuit survived, at least temporarily. In September 2004, the Seventh Circuit considered the Tiahrt language and ruled that while the rider precluded the use of appropriated funds to disclose trace and multiple sale data to Chicago, it had not substantively changed the FOIA standards for disclosure. Since Chicago had offered to pay the costs associated with disclosure, thus making the use of appropriated funds *de minimis*, the Court of Appeals again held that ATF must provide the City access to the databases.<sup>149</sup>

Just two months after the court's September 2004 ruling, the gun lobby tried again. Rep. Tiahrt inserted another rider, this time in ATF's 2005 appropriations bill. Congress expanded the scope of the amendment in the Consolidated Appropriations Act of 2005, by making it impossible to get the crime gun trace data even if a court has ordered its production. This rider stated that "all such data shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court. . . ."<sup>150</sup> This prevents crime gun trace data and multiple sales data from being obtained under FOIA, or through a court subpoena. The provision was also

expanded to be retroactive – meaning that subpoenas which had already been issued before the amendment was passed were to be unenforceable. In addition, whereas the two previous riders barred the use of appropriated monies by ATF to release trace or multiple sale data in response to FOIA requests, the language in the 2005 version arguably reached any use of appropriated monies by ATF to disclose the data *even in its own public reports*.

The City, and the public, never obtained the data they were entitled to under FOIA.

The gun lobby went even further in the 2006 ATF funding bill.<sup>152</sup> This version of the Tiahrt Amendment still includes the restriction on ATF releasing any crime gun trace data to anyone, even under court subpoena, but now also attempts to prevent crime gun trace data from being used in court or relied on by plaintiffs in lawsuits against the gun industry.

***“ The flow of guns into criminal hands in New York would substantially decrease if manufacturers and distributors insisted that retail dealers who sell their guns be responsible . . . ”***

— Judge Jack B. Weinstein, U.S. District Court, Eastern District of New York

As a result of the 2005 legislation, the Seventh Circuit reheard Chicago’s FOIA case yet again, in light of the 2005 rider, and found in favor of ATF. The Court found that there was nothing it could do to require ATF to turn over the data to which the public was entitled – the 2005 appropriations legislation not only prevents ATF from acting on FOIA requests, but also prevents the public from turning to the courts for help. The Court wrote:

“Prior to the rider, a requesting party could obtain the information through ATF or the courts. In the 2005 rider, Congress blocked both avenues of relief by stripping ATF and the courts of the ability to act on the public’s requests, effectively exempting the information from disclosure.”<sup>151</sup>

This language would bar a court from admitting trace data and multiple sale data as evidence in a civil proceeding, even if a court has determined that they meet the generally applicable rules of evidence regarding admissibility in that court. The legislation purports to bar expert witnesses from relying on the data to formulate and support their expert opinions in civil proceedings, even if a court has determined that the expert’s reliance on the data conforms to the generally applicable evidentiary requirements for expert testimony. In short, the 2006 appropriations rider attempts to forbid the use of crime gun trace and multiple sale data in civil actions, even if the data is probative of the issues in the case and necessary to ensure a fair hearing.

The legislation is an extraordinary attempt by Congress to intervene in judicial proceedings for the purpose of “stacking the deck” in favor of gun industry defendants, and it may well be unconstitutional for that and other reasons. The

gun industry was threatened not only by Chicago's suit, but by conclusions made in 2003 by another federal court in *NAACP v. Accusport*.<sup>153</sup>

In its ruling in that case, the court relied extensively on evidence from the crime gun trace database, and related expert testimony, in finding that the gun industry's distribution practices contribute to the public nuisance of illegal guns in New York City. The court found that "[c]areless practices and lack of appropriate precautions on the part of some retailers lead to the diversion of a large number of handguns from the legal primary market into a substantial illegal secondary market." It further found that "[t]he flow of guns into criminal hands in New York would substantially decrease if manufacturers and distributors insisted that retail dealers who sell their guns be responsible. . . ." <sup>154</sup>

The expanded 2006 legislation was clearly an attempt to ensure that no other court has the benefit of evidence that is so damning to the gun industry.

On March 16, 2006, a bill was introduced in Congress that would make the Tiahrt Amendment permanent. H.R. 5005, misleadingly named "The Firearms Corrections and Improvements Act," was introduced by Rep. Lamar Smith (R-TX). Among other provisions weakening federal enforcement of gun laws,<sup>155</sup> it would prohibit the disclosure of crime gun trace and multiple sale information "to any entity" except to a law enforcement agency or prosecutor in connection with a bona fide criminal investigation or prosecution. There is, of course, no doubt that Rep. Smith is carrying the NRA's water – an email sent to Congressional members directed them to call the NRA's Federal Affairs office, rather than Rep. Smith's office, with questions about the legislation.<sup>156</sup>

The Tiahrt Amendment, and proposed legislation to make its provisions permanent, have the purpose and effect of legislating ignorance about crime and guns.

## The Effect of the Tiahrt Amendment on ATF

Since the 2005 Tiahrt Amendment, ATF has been prohibited from releasing any more crime gun trace data to the public. No longer can ATF issue its own reports based on the trace data or reports discussing the data.

The Tiahrt Amendment has had an immediate chilling effect on ATF's activities. According to the Bureau, it is prevented from releasing even aggregate information about crime gun traces to the public in the form of raw trace data or reports.<sup>157</sup> According to a spokesman for ATF, the agency is forbidden from "releasing to the public 'any information *derived from* tracing of firearms.'" <sup>158</sup>

For example, if the Tiahrt Amendment had been law in 1996, ATF could not have issued the reports under the Youth Crime Gun Interdiction Initiative that provided individual cities, their law enforcement authorities, and the general public, valuable information about the guns traced to crime in their communities.

It will also prevent ATF from disclosing crime gun trace data to gun manufacturers and distributors to enable them to better ensure that their retailers use responsible business practices, despite the fact that ATF publicly announced that it would provide trace data to gun manufacturers to enable them "to police the distribution of the firearms they sell."<sup>159</sup> Since ATF can no longer furnish trace data to the industry, gun makers finally have an excuse for their failure to use the data, as ATF had advised in 2000, "to build sounder and safer businesses."<sup>160</sup>



Since 2004, the Tiahrt Amendment has even required ATF to publicly disavow its longstanding conclusions about the value of crime gun trace data. Although the Amendment permits limited disclosure of trace and multiple sale information to law enforcement agencies in connection with bona fide criminal investigations, a separate part of the appropriations legislation requires that in any release of trace data, ATF must include language “that would make it clear that trace data cannot be used to draw broad conclusions about firearms-related crime.” Of course, going back as far as Project Identification in 1973, ATF had used trace data to “draw broad conclusions about firearms-related crime.” As described in detail in Part 2, researchers have also used trace data in this way. Not only does the Tiahrt Amendment severely limit ATF’s use and disclosure of trace data, it actually commands ATF to make statements about the data the Bureau knows to be untrue. This particularly Orwellian feature of the Tiahrt language underscores the gun lobby’s determination to ensure that the public no longer knows the truth about guns and crime.

## The Effect of the Tiahrt Amendment on Law Enforcement

As demonstrated by the numerous reports discussed in Part II, analysis of crime gun trace data and multiple sales reports allows law enforcement to investigate patterns of gun trafficking on a nationwide basis and identify sources of crime guns. These efforts will be

***“I would not expect that I would need to remind Congress of the horrific consequences that this country, and particularly New York City, suffered as a result of the federal government’s failure to share information ...”***

— Mayor Michael Bloomberg

crippled by the Tiahrt Amendment.

Although the Amendment provides for limited disclosure of crime gun trace data to law enforcement agencies, the data can only be “for use in a bona fide criminal investigation or prosecution” and, even then, the disclosure must be limited to information that “pertains to the geographic jurisdiction of the law enforcement agency or prosecutor requesting the disclosure.”<sup>161</sup>

In the past, ATF has released information from its crime gun trace database to local and state governments, and law enforcement agencies, without the requirement that the data relate to a specific criminal investigation or that the data disclosed be limited to crime guns pertaining to the requesting jurisdiction. For example, if a local law enforcement agency wanted information to allow it to know which gun dealers in its community exhibit “trafficking indicators” as specified by ATF (such as multiple crime gun traces, short “time-to-crime” for traced crime guns, or frequent multiple sales), the Tiahrt Amendment presumably would block ATF from sharing that information. Law enforcement agencies may want the information to craft effective enforcement strategies against those dealers, long before a specific criminal investigation has begun. Law enforcement agencies may also need such data to propose legislative or policy initiatives to protect the community from the risk of diversion of crime



guns from such dealers. As ATF itself has recognized, its public dissemination of crime gun trace data provides “crime gun information to the *Federal, State, and local law enforcement agencies* that submit trace requests, boosting their information resources for arresting gun criminals, responding to gun violence, and establishing a benchmark for crime gun measurements.”<sup>162</sup>

The gun lobby claims that disclosure of crime gun trace data threatens to reveal undercover and other law enforcement operations against gun traffickers and corrupt dealers. On the contrary, by barring ATF from disclosing crime gun trace and multiple sale data to law enforcement agencies, the bill adversely affects law enforcement’s ability to help ATF to combat gun trafficking and the reckless dealers who aid and abet it. As Mayor Michael R. Bloomberg of New York City testified, in opposing H.R. 5005 and its codification of the Tiahrt language:

**“I would not expect that I would need to remind Congress of the horrific consequences that this country, and particularly New York City, suffered as a result of the federal government’s failure to share information among law enforcement agencies, and to work together to ‘connect the dots’ in order to establish patterns of criminality and threats of danger.”<sup>163</sup>**

The argument that the Tiahrt Amendment is needed to protect law enforcement operations is entirely false. “I was just thinking of the safety of police,” Rep. Tiahrt told the *Denver Post*. “Some of these undercover officers have been involved in transactions that could be disclosed by the release of trace data.” The *Post*

noted, however, that he could not name a single instance when an officer’s safety had been compromised by a previous release of ATF gun trace data.<sup>164</sup> As noted above, for many years ATF has disclosed crime gun trace information to the public, while redacting any data it felt could compromise law enforcement investigations. The Tiahrt Amendment, on the other hand, is a far broader prohibition of disclosure than necessary to protect law enforcement investigations. As explained above, it would bar ATF itself from referring to aggregate trace data in its own reports providing the public, along with government and law enforcement officials, valuable information about guns and crime. There is no evidence that the reports issued by ATF containing crime gun trace data have compromised a single law enforcement investigation. Likewise, there is no evidence that the studies and reports based on ATF crime gun trace data previously published by scholars, advocacy groups, the press, and government agencies have revealed confidential ATF sources or adversely affected law enforcement activities. To the contrary, these studies and reports have highlighted law enforcement techniques that can work to stop gun trafficking.

The Law Enforcement Steering Committee (LESC), composed of major national law enforcement groups, including the Federal Law Enforcement Officers Association, the Major Cities Chiefs, and the International Brotherhood of Police Officers, has expressed concerns about legislative restrictions on ATF’s disclosure of trace data. In a letter to the Senate concerning provisions in the 2004 appropriations bill, the LESL stated that its members “are concerned by a provision included in the omnibus bill which will prohibit the Bureau of Alcohol, Tobacco, Firearms and Explosives from publicly disclosing or sharing gun trace data with local law enforcement.”<sup>165</sup> Of course, the 2004 rider



restricted only disclosure of trace data pursuant to FOIA requests, and thus was far more narrow in scope than the more draconian version in place now.

## The Effect of the Tiahrt Amendment on Congress

By blindly passing an NRA-drafted piece of legislation, Congress has effectively prevented itself from gaining access to data needed to draft effective legislation and perform its responsibility for oversight of federal gun enforcement efforts. Under the current law, **ATF will not even be able to disclose crime gun trace data pursuant to a request from Congress.**

Trace data has been used by Members of Congress, for example, to establish that most guns traced to crime originate with a small percentage of licensed gun dealers.<sup>166</sup> Members will no longer be able to obtain such data.

Nor will ATF be allowed to testify before Congress concerning any details on, for instance, its enforcement activities related to dealers with high numbers of crime gun traces. The Government Accountability Office will not be allowed to review crime gun trace data to evaluate the effectiveness of ATF's National Trace Center or the effectiveness of ATF's enforcement activities. Evaluation of ATF's success or failure in working to reduce gun violence by preventing diversion of guns to the illegal market will be severely hampered.

## The Effect of the Tiahrt Amendment on the Use of Trace Data in Research

Under the Tiahrt Amendment, ATF is also prevented from disclosing valuable crime gun data to the press, advocacy organizations, and scholars

who are studying the problem of guns and crime. As noted, trace data has been used in studies showing, for example, that:

- (1) the illegal market is largely supplied by the rapid diversion of guns from a relatively few licensed gun dealers;
- (2) illegal guns in states with strong gun laws largely originate in states with weak laws, while illegal guns in states with weak laws come from in-state dealers;
- (3) laws regulating the legal market can help stem the flow of guns into the illegal market; and
- (4) certain kinds of guns are disproportionately associated with criminal activity.

Under the Tiahrt Amendment, independent researchers no longer will have access to the data that made these studies possible.

Noted academic researchers have already found their work stymied. Voicing their horror with the effect of the Tiahrt Amendment on scientific research, one professor commented: "If you want to advance science and understanding about a problem, you use the scientific peer review process, not a political or legal filter. It [the Tiahrt Amendment] is a hindrance to science and the formation of good policy."<sup>167</sup> Another professor, discussing how valuable crime gun trace data has been, lamented the effect of the Tiahrt Amendment as "consciously making ourselves stupid."<sup>168</sup>



---

## CONCLUSION

Slowly the curtain has fallen on the truth about guns and crime. After an unprecedented explosion of new learning from the use of trace data by ATF and others during the Clinton years, the release of crime gun trace information from ATF quickly slowed to a trickle following President Bush's Inauguration. No longer did ATF release data and analyses showing the close connection between the gun industry and the illegal gun market. Instead the Bureau now publicly excuses high-trace gun dealers by asserting that they may simply have high sales volume, while withholding from the public (but not the gun industry) a crucial internal report showing that gun dealers with the highest numbers of crime gun traces do not have the highest sales volume and are frequent violators of federal gun laws.

As the gun lobby, and particularly the gun industry, realized the danger to its interests from release of crime gun trace data, it turned to its friends in Congress for help. Starting in 2003, each year the gun lobby quietly attached riders to ATF appropriations legislation – first through Rep. Istook and then through Rep. Tiahrt – placing greater and greater limits on disclosure of trace and multiple sale data.

The more the public understands about crime guns, the more it also understands the integral role of reckless licensed dealers in supplying the illegal market and the need for tighter federal regulation of gun dealers and gun sales to curb the flow of guns into criminal hands. For the gun lobby, the public had started to “know too much.” The Tiahrt Amendment has solved that problem for the NRA and the gun industry. The tradition of secrecy in federal gun regulation has been restored. The truth about guns and crime no longer threatens the gun industry with accountability for its conduct and the NRA can continue to market the mythology that gun laws can do nothing to keep guns out of criminal hands.

# Without A Trace

---



# End Notes

- <sup>1</sup> See, e.g., NRA-ILA Fact Sheet, “Licensing and Registration” accessed at <http://www.nraila.org/Issues/FactSheets/Read.aspx?ID=28>.
- <sup>2</sup> Wayne LaPierre, Executive Vice President, NRA, as quoted in NRA fundraising letter (April 1995).
- <sup>3</sup> NRA membership letter, as quoted in Washington Monthly (June 1983).
- <sup>4</sup> Davidson, *Under Fire: The NRA and the Battle for Gun Control* (1993) at 46.
- <sup>5</sup> See 18 U.S.C. 922(a), 922(b)(5) and 923(g)(1)(A).
- <sup>6</sup> See 27 C.F.R. § 478.125(e).
- <sup>7</sup> See 27 C.F.R. § 478.124.
- <sup>8</sup> See 18 U.S.C. 923(g)(3).
- <sup>9</sup> See Pub. L. 95-429, 92 Stat. 1002 (Oct. 10, 1978).
- <sup>10</sup> See 18 U.S.C. § 926(a).
- <sup>11</sup> See 18 U.S.C. § 923(g)(4).
- <sup>12</sup> See Pub. L. 104-208, 110 Stat. 3009-319 (Sept. 30, 1996).
- <sup>13</sup> See 18 U.S.C. § 922(t)(2)(C).
- <sup>14</sup> National Instant Criminal Background Check System Regulation, 63 Fed. Reg. 58,303 (Oct. 30, 1998).
- <sup>15</sup> *National Rifle Association of America, Inc. v. Reno*, 216 F.3d 122 (D.C. Cir. 2000).
- <sup>16</sup> National Instant Criminal Background Check System Regulation, 66 Fed. Reg. 6471 (Jan. 22, 2001).
- <sup>17</sup> National Instant Criminal Background Check System, 66 Fed. Reg. 35,567 (Jul. 6, 2001).
- <sup>18</sup> See Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, § 615, 118 Stat. 2809, 2915 (Dec. 8, 2004).
- <sup>19</sup> Gen. Accounting Office, Report to the Chairman, Subcomm. on Oversight of Gov’t Mgmt, Restructuring and the District of Columbia, Comm. on Governmental Affairs, United States Senate, *Potential Effects of Next Day Destruction of NICS Background Check Records* at 4 (July 2002).
- <sup>20</sup> *Id.* at 2.
- <sup>21</sup> See, e.g., Franklin Zimring, *Firearms and Federal Law: The Gun Control Act of 1968*, 4 J. Legal Studies 133, 192 (“More than half of all multiple firearm purchases involving handguns appeared to violate the Act, compared with one-percent estimated violation rate of transactions selected at random. From all appearances, regulatory audits should concentrate on multiple handgun transactions, and the criminal enforcement branch has a special stake in acquiring information on the number and pattern of such transactions.”); Firearms Legislation: Hearings before the Subcomm. On Crime, House Judiciary Committee, 94th Cong. (1975) (extensive testimony by ATF on association between multiple sales and gun trafficking); Steven Brill; Police Foundation, *Firearms Abuse: A Research and Policy Report* (1977) at 127 (proper enforcement and follow-up investigation of multiple sales reporting requirement has “great potential for curbing illegal trafficking in handguns”).
- <sup>22</sup> See 18 U.S.C. 923(g)(3)(A).
- <sup>23</sup> See 18 U.S.C. § 922(s)(6)(B)(i).
- <sup>24</sup> See, e.g., ATF, *The Illegal Youth Firearms Market in 17 Communities* (1997) at 3.
- <sup>25</sup> See Declaration of Gerald Nunziato filed in *California v. Arcadia Machine & Tool, Inc.*, No. 4095 (Superior Court of California) at paragraph 9 (Mar. 7, 2003).
- <sup>26</sup> ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (2000) at iii.
- <sup>27</sup> See Philip Cook & Anthony Braga, *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, 43 Ariz. L. Rev. 277, 281 (2001).
- <sup>28</sup> In 1997, ATF began a pilot program to speed the response time to law enforcement for trace request results. “Access 2000,” as it is now known, involved electronically searching three participating firearms manufacturers’ records. By using a computer terminal in the National Tracing Center that is linked to manufacturers’ internal computer systems, ATF is able to

automatically check records to find what distributor a manufacturer sold a particular traced gun to, and can do so 24 hours a day, seven days a week. This avoids ATF having to take the step of telephoning or faxing the manufacturers and having the manufacturers manually check the records. As of 2003, 39 manufacturers and distributors were participating in the program. *See ATF 2003 Performance and Accountability Report.*

The manufacturers and distributors have been told by ATF that they can use the Access 2000 program to monitor guns traced to crime. *See Letter from Forest Webb, ATF Special Agent in Charge, Nat'l Tracing Ctr., to Simon Bloom, Taurus Int'l Mfg., Inc., at 2, Mar. 23, 2000.*

<sup>29</sup> *See supra* note 27.

<sup>30</sup> *See ATF, The Illegal Youth Firearms Market in 27 Communities*, at 14 (Oct. 1998).

<sup>31</sup> *See ATF, Commerce in Firearms in the United States* at 2 (Feb. 2000) (“*Commerce in Firearms*”).

<sup>32</sup> *Id.* at 19.

<sup>33</sup> *See ATF, Project Identification: A Study of Handguns Used in Crime* (1973).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 2.

<sup>36</sup> *Id.* at 13-14.

<sup>37</sup> *See ATF/DPD Firearms Trace Project Detroit* (April 1990).

<sup>38</sup> *Id.*

<sup>39</sup> *See David M. Kennedy, Anne M. Piehl, & Anthony A. Braga, Youth Violence in Boston: Gun Markets, Serious Youth Offenders, and a Use-Reduction Strategy*, 59 *Law & Contemp. Probs.* 147 (1996).

<sup>40</sup> *Id.* at 170.

<sup>41</sup> *Id.* at 179.

<sup>42</sup> *See* 18 U.S.C. sec. 923(g)(7).

<sup>43</sup> *See Commerce in Firearms* at 2 ; Cook & Braga, *Comprehensive Firearms Tracing: Strategic and Investigative Uses of New Data on Firearms Markets*, 43 *Ariz. L. Rev.* 277 (2001).

<sup>44</sup> *See ATF, 1994 Baltimore Trace Study* (1994); Chicago Field Division, ATF, Memorandum to Chief, *Implementation of Secretary Bentsen's Anti-Gun, Anti-Violence Initiatives*, Nov. 29, 1994; Dallas Field Division, ATF, *Final Report and Recommendations on Anti-Gun, Anti-Violence Trace Study*, Nov. 30, 1994; Los Angeles Field Division, ATF, *Firearms Trace Studies*, Nov. 28, 1994; Los Angeles Field Division, ATF, *Sources of Crime Guns in Southern California* (1995); Miami Field Division, ATF, *Secretary Bentsen's Anti-Gun, Anti-Violence Initiative Gun Trace Study*, Nov. 21, 1994; New York Field Division, ATF, *Secretary Benson's [sic] Anti-Gun, Anti-Violence Initiatives*, Dec. 9, 1994; Phoenix Field Division, ATF, *A Study of Firearms Involved in Crimes in the Phoenix Metropolitan Area, June 1994 through February 1995*; Washington, DC Field Division, ATF, *Project Lead, January 1 through December 31, 1994*.

<sup>45</sup> ATF National Trace database. Trace counts provided by Crime Gun Solutions, LLC.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> U.S. Department of Treasury, *1996 Highlights of the Bureau of Alcohol, Tobacco and Firearms* at 15.

<sup>51</sup> *ATF Annual Report 1997* at 18.

<sup>52</sup> *Id.*

<sup>53</sup> ATF, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999), National Report* at 51 (Nov. 2000) (“*Crime Gun Trace Reports (1999)*”).

<sup>54</sup> *Id.*





# End Notes

- <sup>55</sup> U.S. Department of Treasury, *ATF Accountability Report 2000* at 10.
- <sup>56</sup> U.S. Department of Justice, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* at 24 (July 2004).
- <sup>57</sup> *Id.*
- <sup>58</sup> *Id.*
- <sup>59</sup> Presidential Memo on Youth Crime Gun Interdiction (July 8, 1996), available at <http://www.clintonfoundation.org/legacy/070896-presidential-memo-on-youth-crime-gun-interdiction-initiative.htm>.
- <sup>60</sup> See ATF, *The Illegal Youth Firearms Market in 17 Communities* (1997).
- <sup>61</sup> See ATF Press Release, “Youth Crime Gun Interdiction Initiative Expansion for Fiscal Year 2003,” (July 25, 2002).
- <sup>62</sup> See U.S. Treasury Press Release, “Treasury Releases Report on 1999 Crime Gun Traces,” (Nov. 30, 2000).
- <sup>63</sup> See *Crime Gun Trace Reports* (1999) at 51.
- <sup>64</sup> ATF, *The Illegal Youth Firearms Market in 27 Communities* (1998) at 14 (emphasis in original).
- <sup>65</sup> ATF, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000)* National Report at ix (July 2002) (“*Crime Gun Trace Reports (2000)*”).
- <sup>66</sup> *Id.*
- <sup>67</sup> See, e.g., ATF, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* (2000) at 11 (although federally licensed dealers were involved in the smallest proportion of 1,530 trafficking investigations from 1996 to 1998, they accounted for nearly 80% of diverted firearms).
- <sup>68</sup> *Supra* note 27 at 293-4.
- <sup>69</sup> *Commerce in Firearms* at 21.
- <sup>70</sup> *Id.*
- <sup>71</sup> See *supra* note 21.
- <sup>72</sup> See *Crime Gun Trace Reports (2000)* at ix.
- <sup>73</sup> *Supra* note 27 at 300.
- <sup>74</sup> See Glenn L. Pierce, et al., *The Identification of Patterns of Firearms Trafficking: Implications for Focused Enforcement Strategies*, Northeastern University (1995).
- <sup>75</sup> *Id.* at ii.
- <sup>76</sup> *Id.* at Table 5.
- <sup>77</sup> See Report of Sen. Charles Schumer, *A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes* (June 1999).
- <sup>78</sup> Pawnbrokers, as well as retail dealers, are included in this figure.
- <sup>79</sup> See *Commerce In Firearms* at 2.
- <sup>80</sup> ATF Press Release, “Treasury, ATF Release Firearms Report, Gun Trafficking Actions,” (Feb. 4, 2000).
- <sup>81</sup> *Id.*
- <sup>82</sup> See DOJ, *Gun Violence Reduction: National Integrated Firearms Violence Reduction Strategy* (2001).
- <sup>83</sup> *Id.* at 34.
- <sup>84</sup> *Id.*
- <sup>85</sup> *Id.*
- <sup>86</sup> Accessible at <http://www.gunlawsuits.org/features/reports/index.php#sg>.
- <sup>87</sup> See Americans for Gun Safety, *Selling Crime* (2004).
- <sup>88</sup> See ATF, *YCGII, Crime Gun Trace Reports* (New York) (2000) at 7 (July 2002).

- <sup>89</sup> See ATF, *The Illegal Youth Firearms Market in 27 Communities*, Part II (Oct. 1998).
- <sup>90</sup> See *Crime Gun Trace Reports* (1999) at 37.
- <sup>91</sup> See Daniel Webster, et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 *Injury Prevention* 184 at 184 (2001).
- <sup>92</sup> See Glenn Pierce, et al., *The Characteristics and Dynamic of Crime Gun Markets: Implications for Supply-Side Focused Enforcement Strategies* (Sept. 2003) at 19.
- <sup>93</sup> In 2004, Virginia amended the legislation to, among other things, allow holders of Virginia concealed-handgun permits to purchase more than one handgun a month. See Va. Code Ann. § 18.2-308.2:2(P)(2)(h).
- <sup>94</sup> See Douglas Weil & Rebecca Knox, *Traffic Stop: How the Brady Act Disrupts Interstate Gun Trafficking* at 2 (1997).
- <sup>95</sup> *Id.*
- <sup>96</sup> *Id.* at 9.
- <sup>97</sup> *Supra* note 27 at 306.
- <sup>98</sup> See A. Freedman, *Fire Power: Behind the Cheap Guns Flooding the Cities Is A California Family*, *Wall Street Journal*, Feb. 28, 1992.
- <sup>99</sup> See *Crime Gun Trace Reports* (2000) at x.
- <sup>100</sup> *Id.* at xii.
- <sup>101</sup> See *Cal. Penal Code* § § 12125-33.
- <sup>102</sup> See *Firepower: Assault Weapons in America*, Cox Newspapers, 1989.
- <sup>103</sup> ATF, *Assault Weapons Profile* at 19 (1994).
- <sup>104</sup> *Id.* at 19.
- <sup>105</sup> See Legislative Hearing on the “Public Safety and Recreational Firearms Use Protection Act,” U.S. House of Representatives Judiciary Subcomm. on Crime and Criminal Justice, 103rd Cong. (Apr. 25, 1994) (statement of John W. Magaw, Director, ATF).
- <sup>106</sup> H.R. Rep. No. 102242, at 203 (1991).
- <sup>107</sup> H.R. Rep. No. 103-489, at 12 (1994).
- <sup>108</sup> Jeffrey Roth and Christopher Koper, *Impacts of the 1994 Assault Weapons Ban: 1994-1996* (U.S. Dep’t of Justice National Institute of Justice 1999) at 1, 6.
- In 2004, Koper submitted to the Justice Department an updated study of the ban which assessed its impact during the years 1994-2003. The study found that assault weapons, as a percentage of total crime gun traces, fell 70% from 1992-93 to 2001-02, while the number of total guns traced to crime increased almost 200% during that same period. Christopher Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (July 2004) at 44.
- <sup>109</sup> See Brady Center to Prevent Gun Violence, *On Target: The Impact of the 1994 Federal Assault Weapons Act* at 7 (2004).
- <sup>110</sup> *Id.* at 7-9.
- <sup>111</sup> David Olinger, *Crime-gun records barred*, *The Denver Post*, July 19, 2004
- <sup>112</sup> See *N.A.A.C.P. v. AccuSport, Inc.*, 271 F.Supp.2d 435, 504 (2003).
- <sup>113</sup> *Id.* at 510.
- <sup>114</sup> See Laura Meckler, *Gore Highlights NRA Tape; Bush Downplays It*, *Philadelphia Inquirer*, May 5, 2000 (quoting Kayne Robinson, NRA First Vice President “If we win we’ll have a president . . . where we work out of their office.”).
- <sup>115</sup> *Commerce in Firearms* at 3.
- <sup>116</sup> *Id.* at 2.
- <sup>117</sup> *Firearms Commerce in the United States (2001-2002)* at 7.



# End Notes

- 118 See <http://www.atf.gov/pub/index.htm#Firearms>, accessed Feb. 24, 2006.
- 119 See <http://www.atf.gov/pub/index.htm#arson>, accessed Feb. 24, 2006.
- 120 See, e.g., California Rifle and Pistol Association, Inc., press release, Sept. 2, 2004.
- 121 ATF, Regulatory Actions – *Report to the Secretary on Firearms Initiatives* at i (Nov. 2, 2000).
- 122 *Id.* at iii.
- 123 *Id.* at 7.
- 124 *Id.* at 10.
- 125 See, e.g., Trader Sports’ Response to Opposition to Motion for Summary Judgment, *California v. Arcadia Machine & Tool, Inc.*, No. 4095 (Superior Court of California) (Feb. 18, 2003).
- 126 See Garen J. Wintemute, *Relationship Between Illegal Use of Handguns and Handgun Sales Volume*, 284 JAMA 566 (2000).
- 127 *Id.*
- 128 See Wintemute, et al., *Risk Factors Among Handgun Retailers for Frequent and Disproportionate Sales of Guns used in Crime*, 11 Injury Prevention 357 (2005).
- 129 See Weil & Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759 (1996).
- 130 Cox Newspapers, *Firepower: Assault Weapons in America* (1989).
- 131 Chicago was one of 33 cities and counties that filed civil lawsuits against the gun industry during the period 1998-2002. For detailed reports on these cases, see [www.gunlawsuits.org](http://www.gunlawsuits.org).
- 132 In one other notable instance, a federal court found that ATF had unjustifiably withheld multiple handgun sale information under FOIA. In 1995, the Center to Prevent Handgun Violence (now the Brady Center) submitted a FOIA request for reports on multiple handgun sales made by gun dealers in four Southern states for the years 1993 and 1994. ATF produced some of the reports, but withheld the serial numbers of the guns involved and the identities of the dealers who had made the sales. ATF argued that release of dealers’ identities could subject them “to unwarranted criticism and harassment.” ATF’s Memorandum in Support of Its Motion for Summary Judgment, *Center to Prevent Handgun Violence v. Treasury*, No. 96-1590 D.D.C. (Dec. 23, 1996). The court rejected this argument, finding that “gun sellers have no privacy interest in the contents of multiple sales reports. . . .” *Center to Prevent Handgun Violence v. U.S. Dept. of Treasury*, 981 F. Supp. 20, 23 (D.D.C. 1997). In October 1997, the court ordered that the data be released. It later ordered ATF to pay the plaintiff \$180,266 in attorneys fees. See *Center to Prevent Handgun Violence v. U.S. Dept. of Treasury*, 49 F. Supp. 2d 3 (D.D.C. 1999).
- 133 5 U.S.C. § 552(b)(7)(A).
- 134 *City of Chicago v. U.S. Dept. of Treasury*, 297 F.3d 672 (7th Cir. 2002).
- 135 *City of Chicago v. U.S. Dept. of Treasury*, 287 F.3d 628, 635 (7th Cir. 2002).
- 136 *Id.* at 637.
- 137 *U.S. Dept. of Treasury v. Chicago*, 537 U.S. 1018 (2002).
- 138 *Istook Goes Down Cheap for the NRA*, July 10, 2002, accessed at [www.buzzflash.com/editorial/2002/01/10\\_Istook.html](http://www.buzzflash.com/editorial/2002/01/10_Istook.html).
- 139 See Pub. L. No. 108-7, 117 Stat. 11, 473 (2003).
- No funds appropriated under this Act or any other Act with respect to any fiscal years shall be available to take any action based upon any provision of 5 U.S.C. 552 [FOIA] with respect to records collected or maintained pursuant to 18 U.S.C. 846(b), 923(g)(3) [multiple sales data] or 923(g)(7) [crime gun trace data] or provided by Federal, State, local or foreign law enforcement agencies in connection with arson or explosives incidents or the tracing or a firearm, except that such records may continue to be disclosed to the extent and in the manner that records so collected, maintained, or obtained have been disclosed under 5 U.S.C. 552 prior to the date of the enactment of this Act.
- 140 See, e.g., *Sacrificing Legislative Integrity at the Altar of Appropriations Riders: A Constitutional Crisis*, 21 Harv. Envtl. L. Rev. 457 (1997).

141 *Id.*

142 *Id.*

143 *See* Pub. L. 95-429, 92 Stat. 1002 (Oct. 10, 1978).

144 *See* Pub. L. No. 108-447, § 615, 118 Stat. 2809, 2915 (Dec. 8, 2004).

145 Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 53 (Jan. 23, 2004).

No funds appropriated under this or any other Act may be used to disclose to the public the contents of any portion thereof any information required to be kept by licensees pursuant to section 923(g) of title 18, or required to be reported pursuant to paragraphs (3) and (7) of section 923(g) of title 18, except that this provision shall apply to any request for information made by any person or entity after January 1, 1998.

The reference to requests made after January 1, 1998, was meant to ensure that it would prohibit Chicago's request specifically.

146 *See* Juliet Eilperin, *Firearms Measure Surprises Some in GOP*, *The Washington Post* at A19 (July 21, 2003).

147 *Id.*

148 *Id.*

149 *City of Chicago v. U.S. Dept. of Treasury*, 384 F. 3d 429 (2004).

150 *See* Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2859, 2859-60 (Dec. 8, 2004).

No funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), to anyone other than a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure and not for use in any civil action or proceeding other than an action or proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or a review of such an action or proceeding, to enforce the provisions of chapter 44 of such title, *and all such data shall be immune from legal process and shall not be subject to subpoena or other discovery in any civil action in a State or Federal court or in any administrative proceeding* other than a proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to enforce the provisions of that chapter, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title).

(emphasis added).

151 *City of Chicago v. U.S. Dept. of Treasury*, 423 F. 3d 777, 782 (2005).

152 *See* Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, 119 Stat. 2290, 2295-06 (Nov. 22, 2005).

No funds appropriated under this or any other Act with respect to any fiscal year may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms, and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), to anyone other than a Federal, State, or local law enforcement agency or a prosecutor solely in connection with and for use in a bona fide criminal investigation or prosecution and then only such information as pertains to the geographic jurisdiction of the law enforcement agency requesting the disclosure and not for use in any civil action or proceeding other than an action or proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, or a review of such an action or proceeding, to enforce the provisions of chapter 44 of such title, and all such data shall be immune from legal process and shall not be subject to subpoena or other discovery, *shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner; nor shall testimony or other*



# End Notes

*evidence be permitted based upon such data*, in any civil action pending on or filed after the effective date of this Act in any State (including the District of Columbia) or Federal court or in any administrative proceeding other than a proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to enforce the provisions of that chapter, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title).

(emphasis added).

<sup>153</sup> 271 F. Supp. 2d 435 (E.D.N.Y. 2003).

<sup>154</sup> *Id.* at 450.

<sup>155</sup> For example, H.R. 5005 also would repeal the provision of the Brady Act requiring notice of multiple sales be sent to state or local police. As noted earlier, this provision both requires notice to be sent and that the records be destroyed by the state or local authorities within 20 days. Instead of making the notice requirement meaningful by deleting the record destruction requirement, H.R. 5005 would repeal the notice requirement altogether.

<sup>156</sup> E-mail to congressional staff enclosing NRA Federal Affairs Office “talking points” and “section-by-section summary” on H.R. 5005, Mar. 2006.

<sup>157</sup> See, e.g., Bonnie Pfister, *Lawmakers Call On Feds To Release Gun Data*, AP, March 27, 2006.

<sup>158</sup> Gregory Hladky, *Funding hampers gun control*, New Britain Herald, Feb. 22, 2006.

<sup>159</sup> Treasury/ATF Press Release, *Firearms Report, Gun Trafficking Actions*, Feb. 4, 2000.

<sup>160</sup> ATF, *YCGII, Crime Gun Trace Reports, National Report* (2000) at 1.

<sup>161</sup> See Appropriations Act, 2006 at 2296.

<sup>162</sup> *Crime Gun Trace Reports (2000)* at 1 (emphasis in original).

<sup>163</sup> Legislative Hearing on the “Firearms Corrections and Improvements Act,” H.R. 5005, U.S. House of Representatives Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, 109th Cong. (Mar. 28, 2006) (statement of Michael R. Bloomberg, Mayor of New York City).

<sup>164</sup> See *supra* note 111

<sup>165</sup> Letter from Jerry Flynn, Chair, Law Enforcement Steering Committee, to Congress, January 16, 2004.

<sup>166</sup> See Report of Sen. Charles Schumer, *A Few Bad Apples: Small Number of Gun Dealers the Source of Thousands of Crimes* at 1 (June 1999).

<sup>167</sup> Telephone interview conducted Mar. 15, 2006

<sup>168</sup> Telephone interview conducted Apr. 4, 2006.



# Appendix

## National Tracing Center Trace Request

FOR NTC DATA ENTRY ONLY

Note: \* - Required Entry Field *(Must be completed for trace processing)*  
\*\* - Required Entry With Listed Data Response *(See back for codes and options)*

### Part I - Trace Initiation Information

1a. Date of Request

1b. Priority\*\*      Routine ☐      Urgent *(Justification required)* ☐      For NTC Data Entry Only ☐

Justification

1c. Special Instructions

### Part II - Crime Code Information

2a. Gang Involved? ☐ Gang Name

2b. Project Code\*\*:

2c. NCIC Crime Code\*\*:

Juvenile Involved? ☐ Youth Crime Gun ☐ Entered in NIBIN? ☐ NIBIN No.:

### Part III - ATF Agent Requesting Trace

3a. Organization Code\*

3b. Phone Number:  
Fax Number:

3c. ATF Special Agent's Name *(Last, first, middle)*

3d. Badge Number

3e. ATF Case Number

3f. Field Office

### Part IV - Other Agency Requesting Trace

4a. ORI Number\*

4b. Phone Number:  
Fax Number:

4c. Other Agency Officer's Name *(Last, first, middle)*

4d. Badge Number

4e. Other Agency Case Number

4f. Department/Unit

4g. Mailing Address

### Part V - Firearms Information

5a. Serial Number\*

Obliterated ☐

Attempt to Raise ☐

5b. Firearms Manufacturer\*

5c. Type\*\*

5d. Caliber\*

5e. Model\*

5f. Country of Origin\* *(Importer required if other than U.S.)*

5g. Importer\*

5h. Additional Markings\*

### Part VI - Possessor Information

6a. Name *(Last, First, Middle, Suffix)*

Criminal History ☐

Alias *(AKA) (Last, First, Middle, Suffix)*

AKA Date of Birth

6b. Height

6c. Weight

6d. Sex

6e. Race *(Check one or more boxes)*      Native Hawaiian or Other ☐  
American Indian or Alaskan Native ☐ Pacific Islander  
Asian ☐ Black or African American ☐ Hispanic ☐ White ☐

6f. Address - Route Number

6g. Apt. Number

6h. Street No.

6i. Direction

6j. Street Name

6k. City

6l. County

6m. State

6n. Zip Code *(Nine Digit Number)*

6o. Country

6p. Date of Birth

6q. Place of Birth

6r. Possessor's ID Number

6s. ID Type/State

**Part VII - Associate Information**

7a. Name ( <i>Last, First, Middle, Suffix</i> )					Criminal History <input type="checkbox"/>
Alias ( <i>AKA</i> ) ( <i>Last, First, Middle, Suffix</i> )					AKA Date of Birth
7b. Height	7c. Weight	7d. Sex	7e. Race ( <i>Check one or more boxes</i> ) Native Hawaiian or Other American Indian or Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Hispanic <input type="checkbox"/> White <input type="checkbox"/>	7f. Address - Route Number	
7g. Apt. Number	7h. Street No.	7i. Direction	7j. Street Name	7k. City	
7l. County		7m. State	7n. Zip Code ( <i>Nine Digit Number</i> )	7o. Country	
7p. Date of Birth	7q. Place of Birth	7r. Associates's ID Number		7s. ID Type/State	

**Part VIII - Firearm Recovery Information**

8a. Recovery Date*	8b. Route Number	8c. Apt. Number	8d. Street Number	8e. Direction	8f. Street Name
8g. City*			8h. State*	8i. Zip Code	
8j. Additional Information					

**INSTRUCTIONS FOR COMPLETING ATF FORM 3312.1 - NATIONAL TRACING CENTER TRACE REQUEST****General Instructions - \*Required Data Entry Fields And \*\*Available Options/Codes Listed For Reference**

The information requested on this form is needed to initiate a trace request. All fields marked with an asterisk (\*) indicate required entry data fields. All areas so marked must be completed in order to effectively and expeditiously execute the trace request. Fields marked with a double asterisk (\*\*) indicate areas of required data entry with available options and codes listed for reference (*refer to lists below to determine the appropriate entry and correct nomenclature*).

**REQUIRED ENTRY FIELDS INCLUDE:**

- Question 1b\*\*** - (*Justify Urgent Trace*) See Priorities listed below  
**Question 2b\*\* & 2c\*\*** - Include Project Code and list NCIC Crime Code  
**Question 3a\*** - Office Organizational Code (*For Use by ATF Requestor Only*)  
**Question 4a\*** - ORI - NCIC Originating Requestor Identifier  
**Question 5a\*, 5b\*, 5c\*\*, 5d\*, 5e\*, 5f\*, 5g\* & 5h\*** - Verify Data  
**Question 8a\*, 8g\* & 8h\*** - Confirm Recovery data to be submitted

**Question 1B - Trace Priority** (*Entered Numbered Qualifier to Justify Urgent Trace Request*)

**NOTE:** An urgent trace is deemed necessary when the violations are significant and circumstances warrant or require that the firearm be traced without undue delay. Examples of this are: to hold a suspect, provide probable cause, officer and public safety, etc. The following are examples of significant violations.

- |                         |                           |                          |  |
|-------------------------|---------------------------|--------------------------|--|
| <b>1 - Assault</b>      | <b>3 - Kidnapping</b>     | <b>5 - Rape/Sex</b>      | <b>7 - Terrorist Threat</b>                      |
| <b>2 - Bank Robbery</b> | <b>4 - Murder/Suicide</b> | <b>6 - Terrorist Act</b> | <b>8 - Other</b> ( <i>specify circumstance</i> ) |

**Question 2B - Project Codes** (*Enter all codes that apply*)

- |   |   |  |
|---|---|--|
| <b>AIS</b> - Adult in School                                    | <b>OBL</b> - Obligated Serial Number                    | <b>MUN</b> - Murder and Narcotics ( <i>Ages 25 &amp; older</i> ) |
| <b>GNG</b> - Gang Related                                       | <b>ORG</b> - Organized Crime                            | <b>MIL</b> - Militia Related Project                             |
| <b>JSS</b> - Juvenile & School ( <i>Ages 17 &amp; under</i> )   | <b>SCH</b> - School Involvement ( <i>No Possessor</i> ) | <b>YCG</b> - Youth Crime Gun                                     |
| <b>JVV</b> - Juvenile & Violence ( <i>Ages 17 &amp; under</i> ) | <b>SEN</b> - Sensitive/Significant                      | <b>YIS</b> - Juvenile and School ( <i>Ages 18 - 24</i> )         |

**Question 2C - NCIC Crime Codes** (*Enter one code only. For complete listing refer to NCIC Manual*)

- |  |  |                                   |  |
|--|--|-----------------------------------|--|
| <b>0199</b> Sovereignty                          | <b>1311</b> Aggravated Assault ( <i>Police</i> ) | <b>2999</b> Damage Property       | <b>5399</b> Public Peace                 |
| <b>0299</b> Military                             | <b>1399</b> Assault                              | <b>3599</b> Dangerous Drugs       | <b>5499</b> Traffic Offense              |
| <b>0399</b> Immigration                          | <b>1499</b> Abortion                             | <b>3699</b> Sex Offense           | <b>5599</b> Health - Safekeeping         |
| <b>0907</b> Homicide ( <i>Police Officer</i> )   | <b>1602</b> Threat ( <i>Terroristic</i> )        | <b>3799</b> Obscenity             | <b>5699</b> Civil Rights                 |
| <b>0911</b> Homicide ( <i>Suicide</i> )          | <b>1702</b> Material Witness ( <i>Federal</i> )  | <b>3802</b> Cruelty Toward Child  | <b>5799</b> Invade Privacy               |
| <b>0999</b> Homicide ( <i>Street</i> )           | <b>2099</b> Arson                                | <b>3803</b> Cruelty Toward Spouse | <b>5899</b> Smuggling ( <i>Customs</i> ) |
| <b>1099</b> Kidnapping                           | <b>2199</b> Extortion                            | <b>3999</b> Gambling              | <b>5999</b> Election Laws                |
| <b>1101</b> Rape                                 | <b>2299</b> Burglary                             | <b>4099</b> Commercial Sex        | <b>6099</b> Antitrust                    |
| <b>1199</b> Sexual Assault                       | <b>2399</b> Larceny                              | <b>4199</b> Liquor                | <b>6199</b> Tax Revenue                  |
| <b>1201</b> Robbery ( <i>Business</i> )          | <b>2411</b> Unauthorized Use of Auto             | <b>4899</b> Obstruction Police    | <b>6299</b> Conservation                 |
| <b>1204</b> Robbery ( <i>Street</i> )            | <b>2499</b> Stolen Vehicle                       | <b>4999</b> Flight - Escape       | <b>7099</b> Crimes Against Person        |
| <b>1211</b> Bank Robbery                         | <b>2599</b> Counterfeiting                       | <b>5099</b> Obstruct              | <b>7199</b> Property Crimes              |
| <b>1212</b> Car Jacking                          | <b>2699</b> Fraud                                | <b>5199</b> Bribery               | <b>7299</b> Morals                       |
| <b>1299</b> Robbery                              | <b>2799</b> Embezzlement                         | <b>5211</b> Explosives            | <b>7399</b> Public Order Crimes          |
| <b>1301</b> Aggravated Assault ( <i>Family</i> ) | <b>2899</b> Stolen Property                      | <b>5212</b> Possession of Weapon  | <b>8100</b> Escape ( <i>Juvenile</i> )   |

#### Question 5C - Type of Firearm

- C = Combination** - A weapon designed to be fired from the shoulder which is fitted with both a rifled barrel 16" or greater in length and a smooth-bore barrel 18" or greater in length with an overall length of 26" or more.
- M = Machine Gun** - A weapon of handgun, rifle or shotgun configuration designed to automatically fire more than one shot, without manually reloading, by a single function of the trigger.
- P = Pistol** - A weapon which includes single shot and both single or double-action semiautomatic handguns fitted with a barrel(s) with an integral chamber design or having a chamber(s) permanently aligned with the barrel.
- PR= Pistol/Revolver** - A weapon which includes both single and double-action handguns having a breechloading chambered cylinder designed with a repetitive function based on rotation.
- PD= Pistol/Derringer** - A weapon which includes single barrel, superposed (*over/under*) and multi-barrel configuration handguns based on a hinged or pivoting barrel small frame pistol design.
- R = Rifle** - A weapon designed to be fired from the shoulder which discharges a single projectile through one or more rifled barrels 16" or greater in length with an overall length of 26" or more.
- S = Shotgun** - A weapon designed to be fired from the shoulder which discharge a single or multiple projectiles through one or more smooth-bore barrels 18" or greater in length with an overall length of 26" or more.

#### Paperwork Reduction Act

This request is in accordance with the Paperwork Reduction Act of 1995. The information collection is used by Federal, State and local law enforcement officials to request that the Bureau of Alcohol, Tobacco, Firearms and Explosives trace firearms used or suspected to have been used in crimes.

The estimated average burden associated with this collection of information is 6 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

# Without A Trace





# Notes





A Project of  
the Brady Center to Prevent Gun Violence

1225 Eye Street NW  
Washington DC 20005